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To: All Members of the Council

Town House,
ABERDEEN, 14 October 2016

SPECIAL COUNCIL MEETING

The Members of the **COUNCIL** are requested to meet in Council Chamber - Town House on **MONDAY, 24 OCTOBER 2016 at 10.30am.**

FRASER BELL
HEAD OF LEGAL AND DEMOCRATIC SERVICES

BUSINESS

- 1 Determination of Exempt Business
- 2 Requests for Deputations

GENERAL BUSINESS

- 3 Inter-Authority Agreement on Energy from Waste (Pages 3 - 108)

BUSINESS THE COUNCIL MAY WISH TO CONSIDER IN PRIVATE

- 4 Inter-Authority Agreement on Energy from Waste - Appendix 7 (Pages 109 - 112)

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ABERDEEN CITY COUNCIL

COMMITTEE	Council
DATE	24 October 2016
INTERIM DIRECTOR	Marc Cole
TITLE OF REPORT	Inter-Authority Agreement on Energy from Waste
REPORT NUMBER	CHI/16/257
CHECKLIST COMPLETED	Yes

1. PURPOSE OF REPORT

The purpose of this report is to update members on the progress of the Joint Authority Energy from Waste Project with Aberdeenshire (AC) and the Moray (TMC) Councils and to seek approval to enter into a second stage Inter-Authority Agreement relating to initial project and procurement development work.

2. RECOMMENDATIONS

It is recommended that Council:

1. Approve the terms of the Stage 2 Inter Authority Agreement (IAA2) included at Appendix 1 and authorise the Head of Legal and Democratic Services to enter into this Agreement on behalf of the Council.
2. Approve:
 - a. the continued role of the Director of Communities, Housing and Infrastructure as the Council's Appointed Representative on the Project Board ("Council's Representative");
 - b. in the absence of the Director of Communities, Housing and Infrastructure, that the Head of Public Infrastructure and Environment act as the Council's Representative; and
 - c. that in the absence of both Officers referred to in 2(a) and (b) above the Chief Executive to nominate an alternate to act as the Council's representative provided such appointment is in accordance with the terms of IAA2
3. Approve the continued role of appropriate representatives on the Project Team and Joint Members Energy from Waste Engagement Group as detailed at 6.2.

4. Approve the procurement route and expenditure for the extension of the current advisors contracts and Project Director's contract to enable development of the next stage of the IAA outlined in Section 10.4 and Schedule Part 2 of the IAA2.
5. Notes that the anticipated expenditure of approx. £1,953,000 to fund the Council's contribution to Stage 2 of the IAA will be met from Capital Plan Project 810C.
6. Notes that a similar paper is being put to Aberdeenshire Council's Full Council on 26 October 2016 and the Moray Council's Policy and Resources Committee on 25 October 2016 and that implementation of recommendations 1-5, assuming they are approved, will be subject to similar approval by Aberdeenshire Council and Moray Council.

3. FINANCIAL IMPLICATIONS

The Financial Implications of the need to find an alternative to landfilling our residual waste post-2020 have been considered in an Energy from Waste Business Case in 2013. The Business Case has been reviewed in 2015 and presented to Zero Waste Management Sub-committee on 1 December 2015, ZWSC/7602. Furthermore, Council considered a Report Inter-Authority Agreement – Energy from Waste, CHI/15/337 on 16 December 2015 that also addressed financial implications of joint working for Energy from Waste. The review concluded that a Joint Energy from Waste (EfW) facility built in Aberdeen represents the best value solution for the long term management of residual waste; the Sub-committee agreed with this conclusion. The estimated financial commitment arising from this report will be met from existing approved budgets (Capital Project NHCP 810C – Energy from Waste Land Purchase and Procurement). More detail on the financial implications of the proposed joint project is presented below.

4. OTHER IMPLICATIONS

4.1 Legal. On finalisation of IAA2 the Project Team Legal Lead who is currently from Aberdeenshire Council will work directly with DWF LLP who have been engaged to provide specialist legal support to all three Councils in relation to this project. DWF LLP has been appointed by Aberdeen City Council after a mini-competition on the 2015 Legal Services framework tendered by Aberdeenshire Council on behalf of Aberdeen City and Aberdeenshire Council. Whilst DWF have been appointed by Aberdeen City Council they owe a duty of care to all three Councils to advise on the project.

4.2 Resource Management of the procurement of a Joint EfW solution will initially be undertaken by internal staff as part of their

substantive duties, specialist support will be provided (from within allocated budgets) for legal, financial and technical matters. A project team led by Project Director, Linda Ovens will be recruited for the duration of the procurement.

4.3 Personnel The Waste and Recycling Manager will act as the three Council's technical lead on the project team and a Senior Finance Officer will fulfill as similar role on financial matters.

4.4 Sustainability and environmental. The Joint EfW Project is part of the wider Zero Waste Project and will deliver substantial advances in sustainability and environmental performance. The EfW element will reduce the Council's carbon impact by diverting waste from landfill and producing low carbon energy that displaces fossil fuels.

5. BACKGROUND/MAIN ISSUES

5.1 The Waste (Scotland) Regulations 2012 place a ban on organic waste going to landfill post 2020 and as such the Council will need to find an alternative waste treatment facility for its waste after this date.

5.2 Following an instruction from the Zero Waste Management Subcommittee in 2013, Aberdeen City Council officers approached public authorities in the north of Scotland to determine if joint working would be possible. Both Aberdeenshire and the Moray Councils indicated willingness to consider this option. Each council has jointly and separately concluded that of the practical solutions available, the local and regional interests will best be served by collaboration on a joint EfW facility, to be built in Aberdeen.

5.3 In Aberdeen's case, the Zero Waste Management Subcommittee considered and approved recommendations relating to a revised Energy from Waste Business Case (included as Appendices 2 and 3) in advance of a decision on IAA1.

5.4 In the last quarter of 2015, the Councils each approved the Stage 1 Inter Authority Agreement (IAA1) which allowed work to continue between the three Councils to develop the solution.

5.5 IAA1 has enabled the Councils to establish the project's governance arrangements, appoint a part time project director and interim project manager supported by external financial and legal support and work together as a team to develop the detail of an appropriate solution.

5.6 The proposals are now sufficiently advanced that the project is well defined in terms of Council collaboration and technical solution and is ready to undertake a procurement exercise to seek a contractor.

5.7 The approval of the procurement route in terms of recommendation Four is not agreement to award a contract. Further Council approval will be required and will be set out in a further formal, binding inter-authority agreement (IAA3).

5.8 Alongside this project, Aberdeen City Council has applied for, and gained Planning Permission for a 150,000 tonnes per annum EfW Facility at East Tullos Industrial Estate, Aberdeen.

5.9 The project is part of the Zero Waste Project and will deliver substantial advances in sustainability and environmental performance. The EfW element will reduce the Council's carbon impact by diverting waste from landfill and/or reducing transport of waste and by producing low carbon energy that displaces fossil fuels.

6. PROGRESS TO DATE

6.1 Following approval of IAA1, the councils have worked together to fulfil the obligations of IAA1 and develop the proposals.

6.2 In terms of project governance, this has included:

- Appointment of Project Director, Linda Ovens
- Appointment of Interim Project Manager from the Programme Management Office
- Appointment of external advisers: financial advisers (PWC), technical advisers (Ramboll UK); legal advisers (DWF) (appointed pre IAA1).
- Establishment of Project Board: Director of Communities, Housing and Infrastructure, Alan Wood , Head of Finance, Aberdeenshire Council and Rhona Gunn, Director of Planning and Infrastructure (The Moray Council)
- Establishment of EfW Joint Members Advisory Group: AC: Cllrs Peter Argyle, Robert Merson, Michael Roy; ACC: Cllrs Jean Morrison MBE, John Corall, Andrew Finlayson; TMC: Cllrs John Divers, Graham Leadbitter, John Cowe
- Establishment of lead officers: technical - ACC, legal AC and financial ACC, supported by a number of officers from across the three councils.

The governance arrangements are also set out in Appendix 5.

6.3 In terms of delivery of the solution, (assuming approval of this stage of the project by all three councils), the project team has established that by January 2017 they anticipate they will be ready to publish an OJEU Notice and take the project to market. Key Decisions

and Milestones, as defined within IAA1, have been achieved and approved at the appropriate levels.

7. PROJECT OUTLINE

7.1 The project comprises 4 stages as outlined in Appendix . The purpose of splitting the project into stages provides clear cut-off points and will potentially require different governance arrangements which will be covered by a separate IAA. It is recognised that stages 3 and 4 could be covered by one IAA. In general the 4 stages are described below:

Stage 1 covered the preparatory work that has been done on the joint project; the development of the Stage 2 IAA, and preparations ahead of the procurement process. With this report, this work is nearing completion.

Stage 2 will start following stage 2 IAA approval. Issue of the OJEU Notice initiating the pre-qualification stage for prospective suppliers, is likely to be January 2017. This stage includes the issuing of the OJEU notice, establishment of the project delivery team and the procurement process itself, up to the receipt of tenders and tender evaluation. It is expected to last approximately 2 years.

Stage 3 will follow tender evaluation and award of contract, to deliver the proposed EfW facility. This stage will cover contract management and supervision during construction and commissioning, up to hand-over of the service commencement. This stage will last approximately 2 years.

Stage 4 is the operational stage, and is expected to last for circa 20 years.

8. PROJECT GOVERNANCE

8.1 The current governance structure is working well in terms of ensuring that each of the 3 partner authorities interests are taken into account and has been effective in timeous decision making with appropriate levels of accountability on what is a large capital project requiring significant investment from the partnering councils. It is proposed that this structure continues. The current governance structure is set out in Appendix 5.

8.2 A table of key decision making points, approval levels and timescales for Stage 2 is provided within Part 1 of the Schedule of IAA2.

9. STAGE 2 – IAA2

9.1 A copy of the IAA2 is included at Appendix 1 to this report. Part 2 and paragraphs 13 and 14 of Part 4 have been redacted as they contain exempt information - these sections have been reproduced in a separate exempt appendix. The key elements of IAA2 are:

- The three Councils are committed to work in partnership towards the aim of delivering an Energy from Waste Plant in Aberdeen City.
- The project budget is the budget to be approved by each of the Councils for the period from the signing of IAA2 until the project is in a position to award contract under procurement process/IAA3. Any requirement for a budget in excess of this will be referred back to the Councils for approval.
- Any Council can withdraw from the project at any time up to the signing of the Stage 3 IAA subject to the condition outlined below.
 - In the event that all Council's agree to withdraw from this process there will be no penalties due to the other authorities. In the event that one Authority wishes to withdraw from the process then that Authority would be liable to indemnify the other authorities for any additional costs incurred, claims and liabilities resulting from, its withdrawal or failure to execute the Operational Inter-Authority Agreement, including the costs of re-procurement if the procurement has to be cancelled as a result of the withdrawal. It should further be noted that for Aberdeen City Council this would potentially include the transfer of the Site to the other Authorities at the price paid by Aberdeen City Council when acquiring the site. This means that Aberdeen City Council will not be able to claim any additional money should the site increase in value. There is full recognition that the Councils are 'in this together' and that compensation to the other Councils as a result of withdrawal is complex.

9.2 The Principles by which the Councils will work together during Stage 2 are as follows and provided as Part 4 of the Schedule of IAA2:

- **Works and Services to be Procured:**
 - o Circa 20 Year Design, Build and Operate Contract
- **Public Sector Contracting Entity:**
 - o Lead Authority – Aberdeen City Council will be the lead authority for this project
 - o In terms of the supporting detailed joint working mechanisms with IAA's

- **Site:**
 - o East Tullos Industrial Estate: The title shall vest in the name of Aberdeen City Council until the signing of IAA3, at which point the intention would be for title to vest in all three authorities in proportion to their capital contributions.
- **Mandatory Requirements:**
 - o Construction of the Facility on the Site;
 - o Ability to supply heat to a District Heat Network;
 - o Compliance with the Waste (Scotland) Regulations 2012; and
 - o Operation of the Facility for an operating period of circa 20 years
- **Procurement Strategy:**
 - o Competitive Dialogue, multi stage procurement which allows for refinement throughout the process
- **Basis for Contract Award:**
 - o Most economically advantageous tender
- **Project Share & Capital Contribution:**
 - o Equity share based upon 2017 published residual household waste data. This will cover Project Costs, Capital Contributions, Maximum Tonnage, Electricity Revenue and Site Residual Value
- **Heat Power Revenues:**
 - o Electricity revenue to be shared according to capital contributions
 - o Sufficient Heat to be provided without additional charge to the District Heat Network in accordance with its Business Plan to meet the power efficiency level required by SEPA under the terms of the permit for the Energy from Waste facility.
 - o Commercial revenues to be shared
- **Contract Waste:**
 - o All residual MSW suitable for the plant – excludes mechanical street sweepings & unsuitable large items
- **Spare Capacity/Excess Waste:**
 - o Councils can use any spare capacity provided this not exceed the 150,000 tonnes per annum plant capacity, although current forecasts suggest there will be no spare capacity.
 - o Councils can deliver waste beyond the maximum plant capacity to the Contractor at their Councils' discretion
- **Guaranteed Minimum Tonnage:**

o The Councils undertake to each other to deliver a minimum tonnage sufficient to meet the plant's minimum operational requirements.

10. FINANCIAL COST MODEL

10.1 The estimated cost to ACC of Stage 2 is £1,953,000. These costs for the second stage include the cost of external advisors and the project director to enable development of the next stage of the IAA. This stage will also now include sharing the acquisition and preparation costs of the East Tullos site, following discussion by the project team. This is in accordance with the land purchase costs and the estimated Stage 2 cost presented within IAA1 of £2.5 million.

10.2 It has been agreed by the Project Board that stage costs should be split according to the tonnage of municipal solid waste (MSW) produced according to the latest audited tonnage figures (for Stage 2 this relates to 2015/16).

10.3 On this basis, the shares / splits proposed for stage 2 are as follows:

- Aberdeenshire 47.93% up to £2,455,000
- Aberdeen City 38.09% up to £1,953,000
- The Moray Council 13.98% up to £718,000

10.4 It is anticipated that the advisers and Project Director that have successfully delivered phase 1 shall be retained for phase 2 under the terms of their original tenders. The legal advisor, DWF LLP shall continue to be contracted under the terms of their mini-competition submission under the 2015 Legal Services framework tendered by Aberdeenshire on behalf of Aberdeen City and Aberdeenshire Council at a cost outlined in Schedule Part 2 of the IAA (exempt papers). The financial advisor, PwC LLP shall continue to be contracted under the terms of their mini-competition submission under the Crown Commercial Service Consultancy One Framework Agreement reference RM1502 at a cost outlined in Schedule Part 2 of the IAA (exempt papers). The Technical Advisor, Ramboll UK Limited shall continue to be contracted under their response to the Council's Restricted tender process (OJEU Contract Notice reference 2015/S 231-420203 for Technical Advisers For The Joint Energy From Waste Project) at a cost outlined in Schedule Part 2 of the IAA (exempt papers). The Project Director shall continue to be contracted under the Harvey Nash mini competition submission under the Scottish Government's Interim Professional Staff Services Framework at a cost outlined in Schedule Part 2 of the IAA (exempt papers).

11 FUTURE COSTS

11.1 The high level indicative costs of project support and construction during Stage 3 of the project were included in the Council report

CHI/15/337 – Inter-Authority Agreement on Energy from Waste which was approved on 16 December 2015.

11.2 A detailed review of the costs of Stage 3 will be undertaken during IAA2, using information received from bidders during the competitive dialogue process. This information will be used to refine the cost modelling to be presented to the partner Councils for approval prior to committing to IAA3.

12. IMPACT

Improving Customer Experience – The proposed Energy from Waste facility has the ability to provide heat and power into houses and businesses in Aberdeen, especially benefiting households in fuel poverty where stable low cost heat supply will reduce the proportion of income spent on heat and reduce anxiety around fluctuating energy costs.

Improving Staff Experience – no direct impact on staff as existing and proposed services will be provided by third parties.

Improving our use of Resources – an Energy from Waste business case demonstrates that this proposal is the long term best value option for the city. In addition, managing income from electricity and heat from the plant enables the Council to be protected from projected long term increases in energy costs.

Corporate – the proposals are in line with the Council’s Waste Strategy.

Public – as indicated above, heat and power provision will benefit the public. The development will also result in the regeneration of a currently derelict brownfield site in an industrial area in the city. Concerns expressed over traffic impact will be quantified and mitigated through a traffic impact assessment. Likewise other concerns including health and environmental impact can be addressed.

12. MANAGEMENT OF RISK

12.1 While the Council may have an alternative method of dealing with its waste following the landfill ban the business model shows that the total life cost of building an EfW plant will provide a cost effective solution for the disposal of the Council’s waste.

12.2 There are risk consequences arising from one or more of the three authorities not approving the IAA. The Council has committed approximately £219K to date in developing this project, including costs associated with IAA1. In addition, the Council has entered into a purchase agreement for the proposed site at East Tullos. If IAA2 is not agreed and the project does not proceed, the IAA1 costs would be for nothing and the

Council is left with a site for which there is no alternative identified use.

- 12.3 In terms of the Inter Authority Agreement it is possible for one or all of the Authorities to walk away from the process. This may cause delay and depending on the situation may require a fresh procurement. This is mitigated by a robust procurement exercise which has been predicated on the authorities carrying out affordability tests to ensure that each Council is aware of what is affordable for them.
- 12.4 A detailed project risk register is attached as an Appendix 6.

13. BACKGROUND PAPERS

Appendix 1. Inter Authority Agreement 2 (IAA2) (Redacted version)
Appendix 2. AMEC Foster Wheeler Business Case Update 2015
Appendix 3. EY Appendix 1 to AMEC Foster Wheeler Business Case Update 2015
Appendix 4. High Level Project Plan
Appendix 5. Governance Arrangements Stage 2
Appendix 6. Project Risk Register

Other Papers

1. Minutes of Zero Waste Management Sub-Committee (5 December 2015)
2. Full Council Report (December 2015) – CHI/15/337 Energy from Waste Inter-Authority Agreement
3. AMEC Report 'Aberdeen City Council Energy from Waste Business Case - Technical Report' November 2013
4. Aberdeen City Council - Outline Business Case for Waste Treatment Facilities - October 2012

14. REPORT AUTHOR DETAILS

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Appendix 1. Inter Authority Agreement 2 (IAA2)

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[Date]

(1) **ABERDEEN CITY COUNCIL**

(2) **ABERDEENSHIRE COUNCIL**

AND

(3) **THE MORAY COUNCIL**

INTER-AUTHORITY AGREEMENT FOR THE PROCUREMENT OF AN EFW FACILITY (IAA2)

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BETWEEN:

- (1) **ABERDEEN CITY COUNCIL**, a local authority constituted under the Local Government etc. (Scotland) Act 1994 and having its head office at Marischal College, Broad Street, Aberdeen, AB10 1AB ("**Aberdeen City**") which expression shall include their successors, permitted assignees and transferees;
- (2) **ABERDEENSHIRE COUNCIL**, a local authority constituted under the Local Government etc. (Scotland) Act 1994 and having its head office at Woodhill House, Westburn Road, Aberdeen, AB16 5GB ("**Aberdeenshire**") which expression shall include their successors, permitted assignees and transferees; and
- (3) **THE MORAY COUNCIL**, a local authority constituted under the Local Government etc. (Scotland) Act 1994 and having its head office at The Moray Council Office, High Street, Elgin, Moray, IV30 1BX ("**Moray**") which expression shall include their successors, permitted assignees and transferees.

(each a "**Council**" and together the "**Councils**").

WHEREAS:

- (A) The Councils wish to work in partnership to procure the appointment of a contractor to design, build and operate an Energy from Waste facility at the Site (as hereinafter defined) (the "**Project**") to assist the Councils in meeting their respective statutory obligations and targets arising out of the Waste (Scotland) Regulations 2012 and associated legislation and guidance and Project Objectives and Criteria set out in Part 5 of the Schedule ;
- (B) Pursuant to this partnership, the Councils wish to formally create a joint working arrangement under section 56 of the Local Government (Scotland) Act 1973 for the procurement stage of the Project and record the particulars (including, but without limitation to, the establishment of a board as the joint decision making body in relation to the procurement of the Project) of said working arrangements in this Agreement (the "**Procurement Inter-Authority Agreement**").

THE PARTIES AGREE as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, the following expressions shall have the following meanings:-

- | | |
|----------------------------|---|
| "Agreement" | means this Agreement including the Schedule; |
| "Appointed Representative" | shall have the meaning given to it in Clause 5.1; |
| "Appointment" | means the appointment between the Team and [SGN] in respect of the carrying out of remediation works on the Site; |
| "Business Day" | means a day (other than a Saturday or a Sunday) on which banks are open for domestic business in Aberdeen; |
| "Code" | shall have the meaning given to it in Clause 17.10; |

"Communication Officer"	means such person as may be nominated by the Project Board from time to time;
"Confidential Information"	means information concerning any Council or the Project that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) which is not publically known and which is used in or otherwise relates to the Project or any Council's business, affairs, finances, costs, developments, arrangements, governance, know-how, personnel and in each case regardless of whether such information is marked as "confidential". Such information shall include (but without limitation to) all Intellectual Property Rights, information whose disclosure would or would be likely to, prejudice the commercial interests of any Council or the Project, and all personal data within the meaning of the Data Protection Act 1998;
"Contract"	means the contract to be entered into with the Contractor for the delivery of the Project including for the construction and operation of the EFW Facility;
"Contract Award Notice"	means the notice placed in the Official Journal of the European Union advertising the award of the Contract;
"Contract Execution Date"	means the date upon which the Contract is executed by all parties thereto;
"Contractor"	means the entity selected by the Councils following the completion of the procurement process to deliver the Project;
"Council Decision"	means any matter which has been referred for determination (or is required to be determined including the matters listed in PART 1 of the Schedule) by the Councils in accordance with this Agreement;
"Councils' Programme"	means the programme set out in PART 3 of the Schedule;
"Disclosing Council"	shall have the meaning given to it in Clause 17.6;
"Effective Date"	means the last date of signing of this Agreement];
"EFW Facility Elected Member Engagement Group"	has the meaning given to it in Clause 7.1;
"EFW Facility"	means the energy from waste facility and all supporting infrastructure (including plant and amenities) to be designed, constructed, tested and commissioned pursuant to the Contract;

“Environmental Information Regulations”	means the Environmental Information (Scotland) Regulations 2004 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or Scottish Ministers in relation to such regulations;
“External Advisers”	has the meaning given to it in Clause 5.5;
“ESPD”	means the European Single Procurement Document (Scotland) prepared for the Project;
“Evaluation Panel”	means a group of people appointed by the Project Board to evaluate an aspect of the ESPD and tenders received from Bidders, which group shall include at least one representative from each Council;
“Fees Regulations”	means the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004;
“FOISA”	means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation (as defined in Section 73 of the Freedom of Information (Scotland) Act 2002) made under the Freedom of Information (Scotland) Act 2002 from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or the Scottish Ministers in relation to such Act;
“Information”	has the meaning given to it in Section 73 of the Freedom of Information (Scotland) Act 2002;
“Initiating Council”	has the meaning given to it in Clause 8.6;
“Intellectual Property Rights”	means any and all patents, rights to inventions, trademarks, business names and domain names, copyright and related rights, rights in design, rights in computer software, rights in databases, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“Inter-Authority Finance Lead”	has the meaning given to it in Clause 5.4.5;
“Inter-Authority Legal Lead”	has the meaning given to it in Clause 5.4.6;

“Inter-Authority Technical Lead”	has the meaning given to it in Clause 5.4.7;
“Lead Authority”	means Aberdeen City who has been nominated by the other Councils to act as the lead authority for the Project ;
“Materials”	means all data, text, graphics, images and other materials and/or documents created, used or supplied by a Council to the other Council(s) in connection with the Project or this Agreement;
"Missives"	means the contract between Aberdeen City and SGN under which Aberdeen City will acquire title to the Site from SGN;
“Month”	means a calendar month;
“Nominated Group Representative”	has the meaning given in Clause 7.2;
“OJEU Notice”	means the notice placed in the Official Journal of the European Union advertising the procurement of the Project;
“OJEU Publication Date”	means the date on which the OJEU Notice is published in the Official Journal of the European Union;
“Operational Inter-Authority Agreement”	shall have the meaning given to it in Clause 3.1.2 of this Agreement;
Pre-procurement Inter-Authority Agreement	Means the agreement between the Councils initiating the Project dated 17 December 2015
“Procurement Costs”	means the aggregate of the costs and expenses properly and reasonably incurred by each of the Councils in respect of the procurement of the Project including without prejudice to the generality: (one) payment for services carried out by the Project Director and the external advisors and (two) the costs of finalising the suite of project documentation and all activities required to achieve the Contract Execution Date;
"Procurement Documentation"	means the OJEU, the ESPD, the ITPD, Evaluation Methodology, the Contract and all other documentation prepared during the course of the procurement of the Project;
"Procurement Principles"	means the principles to be reflected in the Procurement Documentation and Contract set out in Part 4 of the Schedule;
“Project”	has the meaning given to it in Recital (A);
“Project Budget”	means the budget agreed by the Councils, for the period from the Effective Date until the Contract Execution Date for the purpose of achieving the Contract Execution Date, as set out in PART 2 of the Schedule to this Agreement (as may be amended in

	accordance with this Agreement from time to time);
“Project Board”	means the board constituted and established by the Councils for the purpose of procuring the Project in accordance with this Agreement;
“Project Board Decision”	means any matter which has been referred for determination (or is required to be determined by the Project Board including the matters listed in PART 1 of the Schedule) in accordance with this Agreement;
“Project Director”	means Linda Ovens or any other such person as may appointed by the Project Board in accordance with Clause 5 (<i>Governance</i>) from time to time and who is responsible for the management of the procurement of the Project and leading the Project Team;
“Project Manager”	means any such person as may appointed by the Project Board to assist the Project Director in the procurement of the Project;
“Project Milestones”	means the actions identified and agreed by the Councils as key Project Milestones as set out in PART 1 of the Schedule (as may be amended by the Councils from time to time in accordance with this Agreement);
“Project Team”	means the team constituted and established by the Councils for the purpose of procuring and managing the Project, comprising the Project Director, Project Manager, Communications Officer and such other personnel as may be appointed from time to time to provide administrative support to the Project Director, Inter-Authority Legal Lead, Inter Authority Technical Lead and Inter-Authority Finance Lead;
“Project Team Decision”	means any matter (including the matters set out in PART 1 of the Schedule) which has been delegated by unanimous decision of the Project Board to the Project Team for their determination on behalf of the Councils;
“Proposed OJEU Date”	means the date upon which, according to the Councils’ Programme, the Councils intend to issue the OJEU Notice;
“Quarter”	means with effect from the Effective Date, the expiry of every three month period during each Year in which this Agreement remains in force pursuant to Clause 2.1;
“Receiving Council”	shall have the meaning given to it in Clause 18.1;
“Requesting Council”	shall have the meaning given to it in Clause 17.6;
“Request for Information”	has the meaning set out in the FOISA or the Environmental Information Regulations as relevant (where the meaning set out for the term 'request' shall apply);
“Respondent”	shall have the meaning given to it in Clause 18.1;

Councils”

"Schedule" means the Schedule to this Agreement;

SGN means SGN Commercial Services Limited a company incorporated in England and Wales under the Companies Acts (Registered Number 05969465) and having its registered office at Lawrence House, Station Approach, Horley, Surrey RH6 9HJ

“Site” means the area edged [red] on the Site Plan;

“Site Plan” means the plan annexed and executed as relative hereto; and

"Team" shall have the meaning in the Missives;

“Year” means a period of 12 consecutive months commencing on the Effective Date.

1.2 In this Agreement, except where the context otherwise requires:-

1.2.1 the masculine includes the feminine and vice-versa;

1.2.2 the singular includes the plural and vice-versa;

1.2.3 a reference to any Clause, sub-Clause, paragraph, Schedule Part, recital or Annex is, except where expressly stated to the contrary, a reference to such Clause, sub-Clause, paragraph, Schedule Part, recital or Annex of and to this Agreement;

1.2.4 save where otherwise provided in this Agreement, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to this Agreement and/or such other document;

1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;

1.2.6 references to any documents being 'in the agreed form' means such documents have been initialled by or on behalf of each of the Councils for the purposes of identification;

1.2.7 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;

1.2.8 headings are for convenience of reference only;

1.2.9 words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words;

1.2.10 a reference to a time of day is a reference to the time in Scotland;

1.2.11 any obligation on a Council to do any act matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and

1.2.12 subject to any express provisions to the contrary, the obligations of any Council are to be performed at that Council's own cost and expense.

1.3 Schedules

The Schedule (including all of its parts thereto) to this Agreement forms part of this Agreement.

2. DURATION

2.1 This Agreement and the rights and obligations of the Councils set out in this Agreement shall commence on the Effective Date and, subject to Clause 15 (*Consequences of Termination*), shall remain in force until the date this Agreement is terminated in accordance with Clause 14 (*Termination*) of this Agreement;

2.2 For the avoidance of doubt the Councils agree that this Agreement supersedes the Pre-procurement Inter-Authority Agreement with effect from the Effective Date;

3. INTER-AUTHORITY AGREEMENTS

3.1 Without prejudice to Clause 15 (*Consequences of Termination*), the Councils acknowledge and agree that this Agreement governs the joint working arrangements between the Councils during the period from the OJEU Publication Date until the day immediately prior to the Contract Execution Date and that:

3.1.1 this Agreement shall cease to have effect from the Contract Execution Date; and

3.1.2 this Agreement shall cease to have effect and shall be replaced by a third inter-authority agreement which shall govern the joint working arrangements between the Councils during the design, build and operation of the EFW Facility procured pursuant to the OJEU Notice (the "**Operational Inter-Authority Agreement**").

4. KEY PRINCIPLES

4.1 Save as expressly provided in this Agreement or where otherwise agreed in writing, the Councils agree that they shall each adhere to the following principles for so long as this Agreement subsists:-

4.1.1 each Council shall work together with the other Councils in good faith and each will act reasonably in all matters pertaining to the Project and this Agreement;

4.1.2 each Council shall co-operate fully with the other Councils at all times and shall, except where there is just cause, not act in a manner which would prevent, or cause unnecessary delay to the Councils' achievement of the Project Milestones in accordance with the Councils' Programme and this Agreement;

4.1.3 each Council shall be transparent in its dealings with each other Council and shall, without prejudice to Clause 17 (*Confidentiality and Freedom of Information*) endeavour to respect matters of confidentiality and political sensitivities of the other Councils;

- 4.1.4 each Council shall not act in a manner which would cause the other Councils to incur unnecessary expense in relation to the procurement of the Project;
- 4.1.5 each Council shall ensure that individuals with relevant expertise are appointed as members (including any replacements thereto) to the Project Board and Project Team;
- 4.1.6 each Council shall ensure that individuals appointed to the Project Team are available to the Project where necessary, including for attendance at bidder meetings;
- 4.1.7 each Council shall not make any representations, give any warranties or incur any liabilities on behalf of another Council;
- 4.1.8 subject always to the right to withdraw in accordance with Clause 10 (*Permitted Withdrawals During the Procurement Process*) or Clause 11 (*Withdrawals During the Procurement Process*), the Councils agree that they shall each:
- (i) use all reasonable endeavours to procure that the Project achieves the Project Milestones by the deadlines specified in PART 1; and
 - (ii) use all reasonable endeavours to procure that the Operational Inter-Authority Agreement is executed by duly authorised signatories by no later than the Contract Execution Date;
- 4.1.9 each Council shall use its reasonable endeavours to act in the best interests of the Project at all times; and
- 4.1.10 each Council shall not seek to be recompensed by the other Councils for expenditure and Procurement Costs (properly and reasonably incurred) which is outwith the Project Budget without having first obtained approval from the Project Board or the other Councils (where the approval of the other Councils is required) prior to the incurrence of said expenditure.
- 4.2 Without prejudice to Clause 4.1 above, the Councils acknowledge and agree that each Council shall work in partnership with every other Council to this Agreement to achieve the Project Milestones in accordance with this Agreement.
- 4.3 Each Council hereby warrants to each of the other Councils that it has obtained all necessary authorities to authorise the joint working arrangements contemplated by this Agreement including delegating to its Authorised Representative the authority to agree or approve decisions which are designated as Project Board Decisions in PART 1 of the Schedule and to amend the Project Budget as may be necessary within the limits of the overall Project Budget.
5. **GOVERNANCE**
- 5.1 The Councils have established a Project Board whose members comprise one director (or one Head of Service) from each of the Councils (each an “**Appointed Representative**”). The Councils may also appoint an alternate to attend and fulfil the role of Appointed

Representative provided that the alternate is at least of the level of Head of Service and has been duly authorised to attend.

- 5.2 An Appointed Representative from each Council shall be present at each meeting of the Project Board.
- 5.3 Without prejudice to Clause 5.10 below, the Project Board shall meet every Month or such other period as may be agreed by the Project Board (provided that such meetings shall be no less than every Quarter) at a time (and location in the case of face-to-face meetings) agreed by the Project Board. The Project Board shall be entitled to hold additional meetings where they consider it necessary for the progression of the Project and any meeting may take place by video or telephone conference call.
- 5.4 The Project Board shall be supported in its functions by a Project Team which shall include the following members:-
 - 5.4.1 the Project Director;
 - 5.4.2 the Project Manager;
 - 5.4.3 Communication Officer;
 - 5.4.4 such other personnel as may be appointed from time to time to provide administrative support to the Project Director;
 - 5.4.5 a nominated financial adviser (being a person employed by one of the Councils) who shall advise the Project Team on financial matters ("**Inter-Authority Finance Lead**");
 - 5.4.6 a nominated legal adviser (being a person employed by one of the Councils) who shall advise the Project Team on legal issues ("**Inter-Authority Legal Lead**");
 - 5.4.7 a nominated technical adviser (being a person employed by one of the Councils) who shall advise the Project Team on technical matters ("**Inter-Authority Technical Lead**"); and
 - 5.4.8 such other adviser or advisers (being a person(s) employed by any of the Councils) as the Project Board may determine is/are necessary to supplement the Project Team from time to time.
- 5.5 External legal advisers, financial advisers and technical advisers, appointed by the Councils to advise the Councils in connection with the Project ("**External Advisers**") shall support the Project Team.
- 5.6 All members of the Project Team have been or shall be appointed by the Project Board.
- 5.7 Subject to the overall limit set out in the Project Budget, the Project Board shall be entitled to engage the services of any specialist, consultant or expert during the term of this Agreement for the provision of advice where the Project Board considers that such engagement is necessary for the progression of the Project.

- 5.8 The Project Board may adjust the Project Budget within the overall limit of the Project Budget to incorporate any additional cost associated with the engagement of such specialist, consultant or expert (if required). Any requirement for additional budget in excess of the overall limit of the Project Budget will be referred back to the Councils for determination as a Council Decision.
- 5.9 The Project Board, may engage the Project Director for such additional hours as the Project Board considers is in the best interests of the Project (and subject to the overall limit, shall adjust the Project Budget accordingly).
- 5.10 The Councils agree that the Project Director shall act as chairperson of the Project Board but shall not be entitled to take part in the determination of any Project Board Decision. The Project Director, in performing his role as chairperson, shall, as a minimum, (with the assistance of the Project Manager):-
- 5.10.1 contact each Appointed Representative and confirm availability for Project Board meetings;
 - 5.10.2 draft an agenda (and all accompanying documentation) for each such Project Board meeting, specifying in reasonable detail the matters to be raised at the meeting which shall include:-
 - (i) any Project Board Decisions requiring to be taken at that meeting;
 - (ii) any Project Board Decisions which remain outstanding from previous meetings;
 - (iii) review of the progress of the procurement and key issues arising in dialogue/negotiation with Bidders, receipt and evaluation of tenders, appointment of a preferred bidder and contract award;
 - (iv) review of the progress of the preparation of the Operational Inter-Authority Agreement;
 - (v) confirmation of matters which each Project Board member shall action prior to subsequent meetings; and
 - (vi) such other matters which the Project Director considers necessary for the progression of the Project.
 - 5.10.3 draft a note or report setting out the Project Director's recommendations (if any) on the course or outcome to be taken by the Project Board in respect of each Project Board Decision referred to in the agenda;
 - 5.10.4 notify the Appointed Representative of arrangements for Project Board meetings reasonably in advance of the meeting;
 - 5.10.5 provide all Appointed Representatives copies of all agendas and reports in good time for the Project Board meeting; and
 - 5.10.6 attend and chair all Project Board meetings.

- 5.11 Each of the Councils agree that they shall make available such of their officers as may be necessary for the purposes of the Project and the governance arrangements described in this Agreement and shall each procure that it shall establish a management and governance structure within its own Council which is sufficiently robust and has the requisite authority to enable its representatives on the Project Board and Project Team to legitimately take Project Board Decisions and Project Team Decisions.
- 5.12 The Project Director and the Project Team shall act under the direction of the Project Board.
- 5.13 The Councils agree that no later than five (5) Business Days following the last day of each Month (or such other period as may be agreed by the Project Board), the Project Team shall be required to provide the Project Board (which shall provide all reasonable information and assistance to the Project Team during its preparation) with a report which shall include, without limitation to, the following items:-
- 5.13.1 status of the Councils' Programme;
 - 5.13.2 status of the achievement of the Project Milestones;
 - 5.13.3 statement of expenditure of the Project Budget;
 - 5.13.4 a summary of any Project Team Decisions, Project Board Decisions and/or Council Decisions;
 - 5.13.5 a summary of any Project Team Decisions, Project Board Decisions and Council Decisions which remain outstanding at the date of issue of such report;
 - 5.13.6 review of the progress of the preparation of the Operational Inter-Authority Agreement;
 - 5.13.7 review of the progress of the procurement and key issues arising in dialogue/negotiation with Bidders, receipt and evaluation of tenders, appointment of a preferred bidder and contract award; and
 - 5.13.8 such other matters which the Project Team and/or the Project Board consider necessary for the progression of the Project from time to time.

6. **DECISION MAKING, AUTHORITY AND EVALUATION PANELS**

- 6.1 The Project Director shall have sufficient authority to make day-to-day decisions and shall liaise on a regular basis with the Project Team and the Project Board.
- 6.2 The only persons authorised to communicate with any prospective or actual bidder in respect of the Project shall be:
- 6.2.1 the Project Director, the Project Manager, the Inter-Authority Legal Lead, the Inter-Authority Finance Lead and the Inter-Authority Technical Lead; and
 - 6.2.2 those officers or consultants specifically authorised by the Project Director for the purpose of negotiating with any prospective or actual bidder in respect of the Project.

- 6.3 Where the Project Board is required to make a Project Board Decision, such decision shall not be implemented unless it has the unanimous approval of all Appointed Representatives.
- 6.4 Where the Project Board cannot agree a Project Board Decision, or where a decision is deemed to be a key issue by the Project Board, that decision may be referred to the Councils to be determined as a Council Decision.
- 6.5 Where any matter is to be determined as a Council Decision under this Agreement, the Project Board shall provide the Councils with a recommendation prior to such Council Decision being taken. All Council Decisions shall require the approval of all of the Councils.
- 6.6 The Councils have identified and categorised a number of key decisions and other actions (listed in PART 1 of the Schedule) which are required to be agreed and, thereafter, implemented in accordance with the Councils' Programme in accordance with PART 1 of the Schedule to this Agreement by the Councils, the Project Board and the Project Team as indicated in PART 1 of the Schedule.
- 6.7 The Councils shall procure that the Project Board makes arrangements for the key decisions indicated as being Project Team Decisions in PART 1 of the Schedule to be taken by the Project Team.
- 6.8 Evaluation Panels shall be appointed by the Project Board for the purpose of evaluating each tender response and ESPD received from Bidders. The Evaluation Panels will each have a chairperson who will be responsible for collating and reporting the consensus score for the evaluation stream for which that Evaluation Panel is responsible.
7. **EFW FACILITY ELECTED MEMBER ENGAGEMENT GROUP**
- 7.1 The Councils acknowledge that they have created and established an elected member engagement group for the purposes of promoting and optimising co-operation between the Councils in connection with the Project (the "**EFW Facility Elected Member Engagement Group**"). The EFW Facility Elected Member Engagement Group shall act as an advisory body to the Project.
- 7.2 The EFW Facility Elected Member Engagement Group shall comprise of at least two nominated elected representatives (each a "**Nominated Group Representative**") from each Council. Where for any reason any Nominated Group Representative is unable to fulfil its role as a member of the EFW Facility Elected Member Engagement Group (including, for the avoidance of doubt, attending any meeting under Clause 7.3 below), each Council shall use reasonable endeavours to procure that a fellow elected representative assumes and fulfils their role as a member of the EFW Facility Elected Member Engagement Group until such time as the Nominated Group Representative is able to re-assume its duties as member.
- 7.3 The EFW Facility Elected Member Engagement Group shall meet every Quarter or such other period as may be agreed by the EFW Facility Elected Member Engagement Group at such time (and location in the case of face-to-face meetings) as may be agreed. The EFW Facility Elected Member Engagement Group shall nominate one member of the EFW Facility Elected Member Engagement Group, during their first Quarterly meeting, to act as chairperson.

Where for any reason the chairperson is unable to chair any meeting, the participating members must appoint one of themselves to chair such meeting.

- 7.4 The chairperson of the EFW Facility Elected Member Engagement Group shall be responsible for drafting an agenda for each Quarterly meeting of the EFW Facility Elected Member Engagement Group. During his preparation of the agenda, the chairperson shall be required to seek input from each of the members of the EFW Facility Elected Member Engagement Group and the Project Director in advance of any such meetings as to any items they consider ought to be discussed during such meeting. The chairperson shall be responsible, during each such Quarterly meeting, for encouraging open discussion and dialogue on each point of the agenda and shall seek agreement from the members (including himself) as to what course they recommend the Project Board should adopt. The chairperson shall, thereafter, relay all such recommendations following such meeting to the Project Director who shall advise the Project Team and the Project Board.
- 7.5 Any recommendation provided by EFW Facility Elected Member Engagement Group pursuant to Clause 7.4 shall constitute a matter for consideration during the determination of any Council Decision, Project Board Decision and/or Project Team Decision and shall not be binding on the Project Board, the Project Team or the Councils.

8. PROJECT BUDGET AND COSTS¹

- 8.1 Subject to each Council complying with Clause 4.1.10, the Procurement Costs, for the period from the Effective Date until the Contract Execution Date, shall be borne by the Councils according to the percentages set out in the following table:-

NAME OF COUNCIL	PROPORTION OF PROCUREMENT COSTS FOR WHICH EACH COUNCIL IS LIABLE (%)
Aberdeen City	38.09%
Aberdeenshire	47.93%
Moray	13.98%

- 8.2 Each Council shall pay the amount(s) allocated to it in accordance with the forecast set out in the Project Budget.
- 8.3 The Project Team shall provide the Project Board with a statement, on a [Quarterly] basis, showing the expenditure and costs during that [Quarter] together with a variance analysis and commentary between the forecast Project Budget and the actual Procurement Costs incurred to that particular date. The Project Board shall provide the Project Team with all reasonable information and assistance during the preparation of such statement.

- 8.4 The Project Board shall review the forecast Project Budget and shall assess such Project Budget against the actual Procurement Costs on a quarterly basis. If it becomes evident that the total Project Costs will exceed the overall limit of the Project Budget, the Project Board shall be required to refer the matter to the Councils for determination as a Council Decision. The Councils shall assess whether the Project Budget remains fit for purpose and shall allocate additional funds where necessary.
- 8.5 The Project Board shall be required, upon the termination of this Agreement, to produce a final statement of the remaining balance of the Project Budget and shall arrange for all funds, if any, to be returned (according to the proportion applicable at that time) to each Council within twenty eight (28) days of issuing said statement.
- 8.6 If a Council (the “**Initiating Council**”) (a) carries out any work or incurs any cost or expenses, or (b) requests the Project Team (or any member of it) to carry out any work relating to the Project, or (c) requests the Project Team (or any member of it) to incur any cost or expense that, in the reasonable opinion of the Project Director, is not an efficient use of time and/or resources, the matter shall be referred to the Project Board for determination (as a Project Team Decision) as to whether such work, cost or expense shall form part of the Project Budget and/or the Procurement Costs or whether such work, cost or expense should be borne by the Initiating Council.
- 8.7 Any dispute as to the allocation of the Procurement Costs shall be resolved in accordance with Clause 26 (*Dispute Resolution Procedure*) of this Agreement.

9. **PROCUREMENT PRINCIPLES**

- 9.1 The Councils agree that the Procurement Documentation, Contract and Operational Inter-Authority Agreement shall be prepared in a manner which is consistent with the Procurement Principles set out in Part 4 of the Schedule.

10. **TITLE TO THE SITE**

- 10.1 Aberdeen City shall use all reasonable endeavours to acquire a valid and marketable title to the Site as soon as reasonably practicable and in any event prior to the Contract Execution Date. Without prejudice to the Procurement Principles set out in Part 4 of the Schedule, failure to acquire a valid and marketable title as a result of the suspensive conditions in the Missives not being purified shall be a project risk with no claim arising between the Parties.
- 10.2 No later than the OJEU Publication Date, Aberdeen City shall deliver to Aberdeenshire and Moray a duty of care letter in terms acceptable to the Moray and Aberdeenshire acting reasonably, from Amec Forster Wheeler in relation to the Amec Forster Wheeler Report on the Site dated March 2015.
- 10.3 The Parties agree that they shall jointly instruct a suitably qualified consultant to undertake a review of the evidence provided by SGN in support of completion of remediation as soon as practicable after Aberdeen City acquires a valid and marketable title to the Site to confirm ground conditions for the purposes of the Project.

- 10.4 Without prejudice to the provisions of Clause 11, if Aberdeen City withdraws from the Project or fails to execute the Operational Inter-Authority Agreement, it shall as soon as practicable thereafter, if required by the remaining Councils transfer its title and whole interest to the Site or where Aberdeen City has not acquired title to the Site, its whole right and interest in the Missives (including any rights it may have in relation to the remediation of the Site) to the remaining Councils (or one of them) for an amount equal to the Price paid (if any) for the Site by Aberdeen City under the Missives.

11. WITHDRAWALS DURING THE PROCUREMENT PROCESS

- 11.1 Each Council acknowledges that its withdrawal from the Project will result in the remaining Councils incurring additional costs. These additional costs include, but are not limited to, the cost of undertaking a change to or re-procurement of the Contract, the opportunity costs resulting from any consequential delay in the Contract Execution Date, and the increased costs arising from re-apportioning the milestone payments between the remaining Councils.
- 11.2 Subject to Clause 11.3, if a Council withdraws from the Project or fails to execute the Operational Inter-Authority Agreement for whatever reason and irrespective of whether it has complied with its obligation to use all reasonable endeavours under Clause 4.1.8 (ii), it shall:
- 11.2.1 indemnify each of the remaining Councils against any reasonably incurred additional costs they may incur arising from, or in connection with its withdrawal or failure to execute the Operational Inter-Authority Agreement, including the costs of re-procurement if the procurement has to be cancelled as a result of the withdrawal;
 - 11.2.2 indemnify each of the remaining Councils against any damage, expenses, liability or costs reasonably incurred by those Councils in contesting any claim resulting from or attributable to its withdrawal or failure to execute the Operational Inter-Authority Agreement; and
 - 11.2.3 not recover any contributions previously made by it which have been expended as at the date of its withdrawal; and
- 11.3 Where any Council withdraws from the Project or fails to execute the Operational Inter-Authority Agreement (for whatever reason and irrespective of whether it has complied with its obligation to use all reasonable endeavours under Clause 4.1.8 (ii)):
- 11.3.1 its obligations and rights in relation to the delivery and governance of the Project shall immediately cease
 - 11.3.2 any financial obligations of that Council which may have arisen or may arise out of the performance of this Agreement, including any obligation to indemnify the other Councils as a result of such withdrawal or failure to execute the Operational Inter-Authority Agreement shall remain in force;

- 11.3.3 where that Council has title to the Site or a right to acquire title to the Site, its obligation to transfer title to the Site or its right to acquire title to the Site to the other Councils as set out in Clause 10.2 shall remain in force;
- 11.3.4 it shall afford all non-financial co-operation necessary to facilitate the delivery of the Project by the remaining Councils, including agreement that all jointly funded or jointly owned assets, including land, roads, utilities and other project infrastructure procured up to and including the date on which the Council withdraws or fails to execute the Operational Inter-Authority Agreement shall be provided to the other Councils for the exclusive use of the Project, as originally envisaged; and
- 11.3.5 if the remaining Councils so require, it shall, notwithstanding its withdrawal from the Project or failure to execute the Operational Inter-Authority Agreement, agree to deliver its Contract Waste to the EFW Facility on terms to be agreed by the Councils (acting reasonably).

12. ABANDONMENT OF THE PROJECT

- 12.1 Without prejudice to Clause 12.3 below, the Councils shall be entitled to abandon the Project (provided that it is a unanimous decision) at any time prior to the execution of the Operational Inter-Authority Agreement.
- 12.2 The Project will be deemed to be abandoned on 30 June 2017 if the OJEU Publication Date does not occur before that date, unless the Project Board unanimously agrees otherwise;
- 12.3 Where the Operational Inter-Authority Agreement has not been executed by each of the Councils by the Procurement Longstop Date, the Project Board shall be required to seek instructions from the Councils (by referring the matter as a Council Decision) as to whether they wish to abandon the Project.
- 12.4 Where the Project has been abandoned pursuant to Clause 12.1, the Councils shall use all monies within the Project Budget at the date of abandonment to settle the Procurement Costs which are due and payable at such date. Where there are insufficient funds within the Project Budget to settle all such Procurement Costs, each Council shall pay their proportion (as set out in Clause 8.1) of the remaining costs from their own internal budget. Any surplus monies from the Project Budget following settlement of such Procurement Costs shall be apportioned with reference to each Council's share under Clause 8.1 and each Council shall receive their respective share of the surplus monies no later than thirty (30) days after full settlement of the Procurement Costs.

13. COUNCIL LIABILITIES

- 13.1 Subject to Clause 13.2 and except in relation to any liability arising as a result of any Council withdrawing from the Project or failing to execute the Operational Inter-Authority Agreement, or failing to transfer title to the Site in accordance with Clause 10.2, each Council's total liability under this Agreement whether in contract, delict (including negligence or breach of statutory duty) or otherwise arising out of or in connection with this Agreement shall be limited to their proportion set out in accordance with Clause 8.1 of the total Project Budget.

- 13.2 Nothing in this Agreement shall exclude or limit:
- 13.2.1 any Council's liability for fraud or fraudulent misrepresentation; or
 - 13.2.2 any Council's liability for death or personal injury caused by its (or its agent's or sub-contractor's negligence).
- 13.3 Each Appointed Representative shall be deemed to be acting on behalf of the Council in respect of which they are a director (or Head of Service), regardless of whether the particular matter under consideration by the Board relates to their particular Council or another Council.
- 13.4 Subject to Clause 13.6 below, each member of the Project Team and any other officer engaged in connection with the Project shall be required to act in the best interests of the Project at all times.
- 13.5 Subject to Clause 13.6 below and without prejudice to Clause 13.4 above, each member of the Project Team shall be deemed to be acting on behalf of the Council in respect of which they are an employee, regardless of whether the particular matter under consideration by the Project Team relates to their particular Council or another Council and shall be entitled to report all matters to their Council.
- 13.6 Where a member of the Project Team considers at any time that their compliance with the obligation under Clause 13.4 above could (one) conflict with their duties as an employee of a Council or (two) adversely affect their Council's commercial or financial interests, such member shall be required to promptly relay their concerns to the Project Director. The Project Director shall, thereafter, promptly refer the matter to the Project Board for consideration.
- 13.7 The Project Team and the Project Board shall, when working on the Project, be deemed to be made available and working on behalf of all Councils in accordance with the powers granted to each Council under Sections 56 and 57 of the Local Government (Scotland) Act 1973.
- 13.8 No Council or any of its members, directors or officers shall be liable to any other Council for any loss such Council incurs as a result of any act or omission by any such member, director, or officer during their engagement with the Project.

14. **TERMINATION**

- 14.1 Without prejudice to Clause 15 (*Consequences of Termination*) below, this Agreement shall terminate on the earliest of:-
- 14.1.1 the Contract Execution Date;
 - 14.1.2 the date upon which only one Council remains a party to this Agreement following a second Council withdrawing from the Project or failing to execute the Operational Inter-Authority Agreement.;
 - 14.1.3 the date upon which all Councils agree in writing to its termination;
 - 14.1.4 the date upon which the Councils collectively decide to abandon the Project in accordance with Clause 12.1

- 14.1.5 30 June 2017 if the Project is deemed to be abandoned in accordance with Clause 12.2.

15. CONSEQUENCES OF TERMINATION

- 15.1 The termination of this Agreement pursuant to Clause 14 (*Termination*) above shall:-
- 15.1.1 be without prejudice to any other rights or remedies which any Council may be entitled to under this Agreement;
- 15.1.2 not affect any accrued rights or liabilities which any Council may then have; and
- 15.1.3 not affect any provision of this Agreement that is expressly or by implication intended to come into or continue in force on or after such termination. Such provisions shall include but not be limited to Clauses 8 (*Project Budget and Costs*), 12 (*Withdrawals During the Procurement Process*), 12 (*Abandonment of the Project*), 13 (*Council Liabilities*), 15 (*Consequences of Termination*) 16 (*Intellectual Property*), and 17 (*Confidentiality and Freedom of Information*).

16. INTELLECTUAL PROPERTY

- 16.1 Each Council shall own all property rights (including all Intellectual Property Rights) in its respective Material.
- 16.2 Each Council hereby grants each of the other Councils under this Agreement a non-exclusive, perpetual, non-transferable and royalty-free licence to use, modify, amend and develop any such Material for the purposes of the Project.
- 16.3 Without prejudice to Clause 16.1, if more than one Council has a legal or beneficial right or interest in any aspect of the Materials for any reason (including the eventuality that no Council has the ability to demonstrate that it independently supplied or created the Materials without the involvement of any of the other Councils), each Council which has contributed to that Material shall grant to the other Council(s) under this Agreement a non-exclusive, perpetual, non-transferable and royalty-free licence to use such Material pursuant to or in connection with the Project.
- 16.4 Each Council hereby warrants that it has the necessary rights to grant the licences under Clauses 16.2 and 16.3. Subject to Clause 13 (*Council Liabilities*), each Council shall indemnify the other Councils against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights as a result of that Council's use of another Council's Intellectual Property Rights pursuant to or in connection with the Project.

17. CONFIDENTIALITY AND FREEDOM OF INFORMATION.

- 17.1 The Councils acknowledge that the commercial information contained within this Agreement and all information as referred to in Clause 17.2 below shall remain confidential in and in particular but not limited to Schedule part 2, and Schedule Part 4 paragraph 13.

- 17.2 The Councils shall keep confidential all Confidential Information received by one Council from the other Council(s) relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.
- 17.3 Clauses 17.1 and 17.2 above shall not apply to:
- 17.3.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Agreement for the performance of those obligations;
 - 17.3.2 any matter which a Council under this Agreement can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 17 (*Confidentiality and Freedom of Information*);
 - 17.3.3 any disclosure to enable a determination to be made under Clause 26 (*Dispute Resolution Procedure*);
 - 17.3.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Council making the disclosure or the rules of any stock exchange or governmental or regulatory authority;
 - 17.3.5 any disclosure of information which is already lawfully in the possession of the receiving Council(s), prior to its disclosure by the disclosing Council;
 - 17.3.6 any provision of information to the Council's own professional advisers or insurance advisers;
 - 17.3.7 any disclosure by any Council of information relating to the design, construction, operation and maintenance of the Project otherwise than in accordance with this Agreement;
 - 17.3.8 any disclosure of information by any Councils to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Council for any purpose related to or ancillary to this Agreement;
 - 17.3.9 any disclosure for the purpose of:
 - (i) the examination and certification of any of the Council's accounts;
 - (ii) any examination pursuant to the Local Government in Scotland Act 2003 of the economy, efficiency and effectiveness with which the Council has used its resources;
 - (iii) complying with a proper request from any Council's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (iv) (without prejudice to the generality of Clause 17.3 above) compliance with the FOISA and/or the Environmental Information Regulations;

provided that, for the avoidance of doubt, neither Clause 17.3.2 nor Clause 17.3.9(iv) above shall permit disclosure of Confidential Information otherwise prohibited by Clause 17.2 above where that information is exempt from disclosure under section 36 of the FOISA.

- 17.4 Where disclosure is permitted under Clause 17.3 (other than Clauses 17.3.2, 17.3.4, 17.3.5 and 17.3.9 above), the Council providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.
- 17.5 The Councils acknowledge and agree that they are subject to the requirements of the FOISA, the Environmental Information Regulations, the INSPIRE (Scotland) Regulations 2009 and the Data Protection Act 1998 and shall facilitate the other Councils' compliance with their legal obligations or Information disclosure requirements pursuant to the same in the manner provided for in Clauses 17.6 to 17.10 inclusive below.
- 17.6 Where a Council (the "**Requesting Council**") receives a Request for Information in relation to Information that another Council (the "**Disclosing Council**") is holding on its behalf and which the Requesting Council does not hold itself, the Requesting Council shall refer to the Disclosing Council such Request for Information that it receives as soon as practicable and in any event within [five (5)] Business Days of receiving a Request for Information and the Disclosing Council shall:
- 17.6.1 provide the Requesting Council with a copy of all such Information in the form that the Requesting Council requires as soon as practicable and in any event within [ten (10)] Business Days (or such other period as the Requesting Council acting reasonably may specify) of the Requesting Council's request; and
- 17.6.2 provide all necessary assistance as reasonably requested by the Requesting Council in connection with any such Information, to enable the Requesting Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOISA or Regulation 5 of the Environmental Information Regulations.
- 17.7 Following notification under Clause 17.6 , and up until such time as the Disclosing Council has provided the Requesting Council with all the Information specified in Clause 17.6.1 , the Disclosing Council may make representations, within 5 Business Days of receiving such notification, to the Requesting Council where it considers that:-
- 17.7.1 the Information is exempt from disclosure under the FOISA or the Environmental Information Regulations;
- 17.7.2 in the circumstances of the particular case, the public interest in maintaining the exemption outweighs the public interest in disclosing the Information referred to in the Request for Information;
- 17.7.3 the Information should not be disclosed in response to the particular Request for Information; and/or

- 17.7.4 further information should reasonably be provided in order to identify and locate the information requested.
- 17.8 Where the Disclosing Council has made representations under Clause 17.7 (save a representation under Clause 17.7.4), the Requesting Council and the Disclosing Council shall discuss such representations with a view to agreeing (which, in any event, shall be no later than the tenth day of the Disclosing Council receiving the Requesting Council's notification under Clause 17.6) as to whether the Requesting Council should refuse the Request for Information in accordance with the FOISA or Environmental Information Regulations (as applicable). Where the Disclosing Council and the Requesting Council are unable to agree by the tenth day of the Disclosing Council receiving the Requesting Council's notification, the Requesting Council shall determine in its absolute discretion as to whether the Request for Information is to be refused and shall be entitled to require the Disclosing Council to provide the Requesting Council with all such Information and assistance to enable the Requesting Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOISA or Regulation 5 of the Environmental Information Regulations.
- 17.9 In the event of a request from the Requesting Council pursuant to Clause 17.6 above, the Disclosing Council shall as soon as practicable, and in any event within [five (5)] Business Days of receipt of such request, inform the Requesting Council of the Disclosing Council's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Requesting Council under Section 13(1) of the FOISA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Requesting Council's own such costs in respect of such Request for Information) will exceed the prescribed amount referred to in Section 12(1) of the FOISA and as set out in the Fees Regulations, the Requesting Council shall inform the Disclosing Council in writing whether or not it still requires the Disclosing Council to comply with the request and where it does require the Disclosing Council to comply with the request, the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Requesting Council is entitled to under Section 10 of the FOISA. In such case, the Requesting Council shall notify the Disclosing Council of such additional days as soon as practicable after becoming aware of them and shall reimburse the Disclosing Council for such costs as the Disclosing Council incurs in complying with the request to the extent the Requesting Council is itself entitled to reimbursement of such costs in accordance with its own FOISA policy from time to time.
- 17.10 The Disclosing Council acknowledges that (notwithstanding the provisions of this Clause 17) the Requesting Council may, acting in accordance with the Scottish Ministers' Code of Practice on the Discharge of Functions of Public Authorities Under the Freedom of Information (Scotland) Act 2002 (the "**Code**"), be obliged under the FOISA, or the Environmental Information Regulations to disclose Information concerning the Disclosing Council or this Agreement:
- 17.10.1 in certain circumstances without consulting with the Disclosing Council; or
- 17.10.2 following consultation with the Disclosing Council and having taken their views into account,

provided always that where Clause 17.10.1 above applies the Requesting Council shall, in accordance with the recommendations of the Code, draw this to the attention of the Disclosing Council prior to any disclosure.

17.12 The obligations in this Clause 17 shall survive the termination of this Agreement.

18. **OMBUDSMAN AND COMPLAINTS**

18.1 Where a Council under this Agreement receives a request for comments or information from the Scottish Public Services Ombudsman (the “**Receiving Council**”) regarding a complaint which the Scottish Public Services Ombudsman has received and such complaint relates to matters pursuant to this Agreement or the Project, the Receiving Council shall:-

18.1.1 notify the other Councils (the “**Respondent Councils**”) as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for comments and/or information; and

18.1.2 provide the Respondent Councils with a copy of its draft response to the complaint within five (5) Business Days or such other time period considered necessary by the Receiving Council (provided that such period does not exceed any time limit imposed by the Scottish Public Services Ombudsman in which the Receiving Council is required to respond).

18.2 The Respondent Councils shall provide all necessary assistance as reasonably requested by the Receiving Council to enable it to respond to the complaint within the time for compliance set by the Scottish Public Sector Ombudsman.

18.3 The Respondent Councils shall provide comments and any relevant information requested by the Receiving Council to the Receiving Council no later than [five (5)] Business Days of receiving such request.

18.4 The Receiving Council shall forward the final copy of the response (incorporating as appropriate the comments and information from the Respondent Councils) to the Responding Councils upon sending such response to the Scottish Public Services Ombudsman.

18.5 Where the Scottish Public Services Ombudsman issues a report under sections 15 or 16 of the Scottish Public Services Ombudsman Act 2002, the Respondent Councils shall provide all reasonable assistance and information to ensure that the Receiving Council complies with its obligations under such Act and shall, where requested, assist the Receiving Council in remedying the issue pursuant to the complaint.

19. **NOTICES**

19.1 Subject to Clause 19.2, any notice given under or in connection with this Agreement is to be in writing and signed by or on behalf of the Council giving it.

19.2 Any notice under Clause 19.1 is to be served by delivering it personally or by commercial courier or sending it by pre-paid recorded delivery or registered post or by electronic mail to the address and the attention of the relevant party set out below:-

Aberdeen City:

Address: Marischal College, Broad Street, Aberdeen, AB10 1AB

Att: Marc Cole

E-mail: [\[\]macole@aberdeencity.gov.uk](mailto:[]macole@aberdeencity.gov.uk)

Aberdeenshire:

Address: Woodhill House, Westburn Road, Aberdeen, AB16 5GB

Att: Alan Wood, Head of Finance

E-mail: alan.wood@aberdeenshire.gov.uk

Moray:

Address: The Moray Council Office, High Street, Elgin, Moray, IV30 1BX

Att: Rhona Gunn, Corporate Director (Economic Development, Planning and Infrastructure Services)

E-mail: rhona.gunn@moray.gov.uk

or such other address, designated person or e-mail address as may be notified from time to time by the relevant Council to the other Council(s).

19.3 Any notice served under Clause 19.1 19.1 shall be deemed to have been received:-

19.3.1 if delivered personally or by commercial courier, at the time of delivery;

19.3.2 in the case of pre-paid recorded delivery or registered post, two (2) Business Days from the date of posting;

19.3.3 in the case of e-mail, on the day of transmission if sent before 4.00 pm on any Business Day and otherwise at 9.am on the next Business Day, subject to confirmation of completion of transmission (which shall, for the avoidance of doubt, include the sender not receiving an error message indicating failure to deliver after sending such e-mail).

20. WAIVER

20.1 No failure or delay by any Council to exercise any right or remedy provided under this Agreement is to constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy is to preclude or restrict the further exercise of that (or any other) right or remedy. Any express waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.

21. ENTIRE AGREEMENT

21.1 This Agreement constitutes the entire agreement between the Councils and supersedes any prior drafts, agreements, undertakings, understandings, representations, warranties and

arrangements of any nature between the Councils, whether or not in writing, in relation to the subject matter of this Agreement.

22. ASSIGNATION

22.1 No Council shall be entitled to assign, novate, sub-contract, transfer or dispose of any of its rights or obligations under this Agreement.

23. VARIATION

23.1 No variation of this Agreement shall be valid unless recorded in writing and signed by a duly authorised representative on behalf of each of the Councils.

24. SEVERANCE

24.1 If any provision (or part of a provision) of this Agreement is or becomes, or is declared to be invalid, unenforceable or illegal by the courts of any competent to which it is subject, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions (and parts of that provision) of this Agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

25. THIRD PARTY RIGHTS

25.1 It is expressly declared that no rights shall be conferred under and arising out of this agreement upon any person other than the parties hereto and, without prejudice to the generality of the foregoing, there shall not be created by this agreement a jus quaesitum tertio in favour of any person whatsoever.

26. DISPUTE RESOLUTION PROCEDURE

26.1 Any disputes or differences arising between the Councils in relation to this Agreement shall be resolved in accordance with this Clause 26 having regard to their obligation under Clause 4.1.1 to act in good faith.

26.2 Where a dispute or difference is considered by the Project Team to be incapable of swift and satisfactory resolution, the matter shall be referred to the Project Board for determination as a Project Board Decision. The Project Board shall refer the matter to the Councils for determination as a Council Decision where the members of the Project Board are unable to reach a consensus on the matter.

27. GOVERNING LAW AND JURISDICTION

27.1 This Agreement and any dispute or claim arising out of, or in connection with, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.

27.2 The Councils unconditionally and irrevocably agree that the courts of Scotland have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF these presents consisting of this and the preceding [26] pages together with the Schedule of [5] parts and the plan annexed are executed as follows:

SEALED AND SUBSCRIBED for and)
on behalf of
Aberdeen City Council by)

At
On
In the presence of:

.....
Signature

.....
Name

.....
Address

SEALED AND SUBSCRIBED for and)
on behalf of
Aberdeenshire Council by)

At
On
In the presence of:

.....
Signature

.....
Name

.....
Address

SEALED AND SUBSCRIBED for and)
on behalf of
The Moray Council by)

At
On

In the presence of:

.....
Signature

.....
Name

.....
Address

SCHEDULE

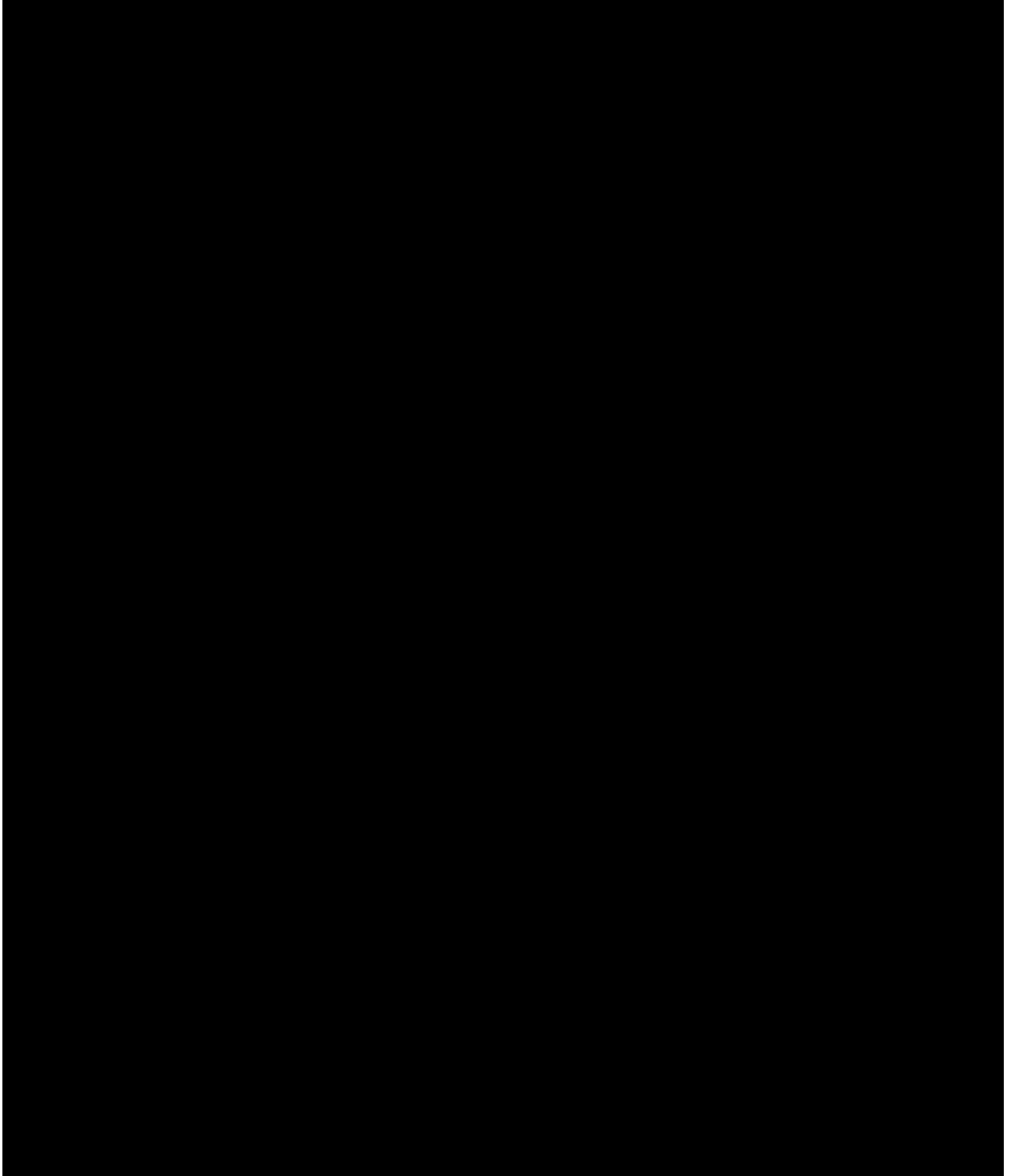
PART 1

PROJECT MILESTONES AND KEY DECISIONS

NO.	DESCRIPTION OF MILESTONE	PROJECT TEAM DECISIONS	PROJECT BOARD DECISIONS	COUNCILS DECISIONS	DATE TO BE ACHIEVED
1.	Agreement to continue Project if OJEU Contract Notice is not published by the 30 June 2017		✓		29 June 2017
2.	Agree Evaluation Criteria for Procurement Process (including PQQ and main tender evaluation criteria)		✓		31 January 2017
3.	Prepare tender documentation (including terms and conditions of Contract)	✓			31 January 2017
4.	Approval of Procurement Documentation including Selection and Award Criteria and publication of OJEU Contract Notice		✓		31 January 2017
5.	Evaluation and ranking of ESPD Responses	✓			31 March 2017
6.	Approval of Bidders to be invited to participate in dialogue		✓		31 March 2017
7.	Decision to Suspend Dialogue following a Project Team recommendation.		✓		
8.	Tender Evaluation	✓			
9.	Down Selection of Bidders Project Board to down select bidders following a Project Team recommendation.		✓		31 December 2017
10.	Approval of and issuing the Invitation to Submit Final Tenders		✓		31 March 2018
11.	Decision to close Dialogue		✓		
12.	Selection of Preferred Bidder following a Project		✓		31 May 2018

NO.	DESCRIPTION OF MILESTONE	PROJECT TEAM DECISIONS	PROJECT BOARD DECISIONS	COUNCILS DECISIONS	DATE TO BE ACHIEVED
	Team recommendation.				
13.	Recommend terms of Operational Inter-Authority Agreement for approval by Councils		✓		31 May 2018
14.	Contract Award Approval and Operational Inter Authority Agreement Approval (IAA3)			✓	30 June 2018
15.	Publish Contract Award Notice in OJEU for Contract Award	✓			31 October 2018
16.	Recommend Project Budget for period following the Contract Execution Date	✓			31 October 2018
17.	Where Project Milestone [13] has not been achieved by 21 December 2018, Councils shall consider whether the Project should be abandoned pursuant to Clause 12			✓	21 December 2018 (Procurement Longstop Date) ²

PART 2
PROJECT BUDGET



PART 3
COUNCILS' PROGRAMME

Activity	Timescale
Lodging of Notice to OJEU	January 2017
ESPD Return Date	March 2017
Completion of ESPD Shortlisting	March 2017
Invitation to Participate in Dialogue issued to up to 4 Bidders	April 2017
Initial Dialogue Phase (6 Sessions each)	May – October 2017
Detailed Solutions Submission Date	November 2017
Down-selection to 2-3 bidders	End December 2017
Final Dialogue Phase (2-3 sessions each)	January/February 2018
Invitation to Submit Final Tenders	March 2018
Final Tenders Submission Date	March/April 2018
Final Tender Clarification and Evaluation	April/May 2018
Preferred Bidder Appointment	June 2018
IAA3/Financial Close/Contract Award	August 2018
Target Service Commencement	August 2021

PART 4

PROCUREMENT PRINCIPLES

1. Works and Services to be procured

A design, build and operate contract will be procured, with an operating period of circa 20 years.

2. Public Sector Contracting Entity.

The Project shall be procured using a Lead Authority model.

3. Site

The EFW Facility will be built on the Site. The Site will have planning permission for the construction of the EFW Facility prior to the issue of the OJEU. The Contractor will be required to apply for and procure the PPC Permit for the EFW Facility.

Title to the site shall be held by the three Authorities in the propositions as set out in the Project Share Percentage (more particularly described at paragraph (7) seven below).

The Site will be leased to the Contractor for a peppercorn rent.

4. Ground Condition/Contamination

Ground Condition and Contamination shall be a Project risk shared between the Councils according to their Project Share Percentage.

5. Mandatory Requirements

- Bids submitted by Bidders will, as a minimum, be required to comply with the following mandatory requirements:
 - Construction of the EFW Facility on the Site;
 - Ability to supply heat to a District Heat Network;
 - Compliance with the Waste (Scotland) Regulations 2012; and
 - Operation of the EFW Facility for an operating period of 20 years.

6. Procurement Strategy

The Project will be procured using the competitive dialogue procedure. The contract will be awarded to the Bidder that submits the most economically advantageous tender based on the best price/quality ratio. The price will be evaluated on the basis of whole life cost. The procurement strategy will include an evaluation of community benefits which Bidders offer as part of their bids.

7. Project Share Percentage

Each Council's Project Share Percentage will be calculated on basis of relative percentages of Contract Waste tonnages for the year 2017.

Contract Waste Tonnages will be determined from the 2017 published residual household waste data from each Council.

The Project Share Percentage will not be revisited during the term of the Contract.

8. Calculation of Capital Contribution

Each Council's capital contribution will equal its Project Share Percentage of the aggregate cost of Site acquisition, design, build and commissioning of the EFW Facility. The cost of Site acquisition is the price payable for the Site in terms of the Missives (together with any Land and Building Transaction Tax and legal fees but exclusive of any interest that may become payable on the price). For the avoidance of doubt this shall also include the cost required to transfer the site into the name of the three authorities in the ratio set out by the Project Share Percentage.

9. Treatment of Income derived from Heat, Power and Third Party Waste

Heat³

The PPC Permit will require the EFW Facility to be capable of meeting a minimum thermal efficiency level (currently 35%). Given the Councils understanding of current technology, this means the EFW Facility will have to be capable of producing heat which can be utilised locally. It is recognised by the three Councils that heat take off reduces the amount of electricity capable of being produced and consequently the amount of income generated.

The Councils will agree to offer heat from the EFW Facility to an operator willing to establish a District Heating Network to provide heat to domestic customers sufficient to enable the minimum thermal efficiency level to be achieved. Any agreement between the Councils and a District Heating Network operator should be transparent and on an open book basis.

Any further heat required above this minimum thermal efficiency level will be supplied on a strictly commercial basis.

Aberdeen City undertakes to the other Councils to prepare and develop a business plan to demonstrate or try to demonstrate the financial viability of a District Heating Network using heat derived from the EFW Facility. .

Power

The Contractor will take volume risk but not price risk.

Subject to the position on Heat, each Council will receive its Project Share Percentage of income generated by the Contractor from Heat, Power and Third Party Waste which is to the public sector's benefit.

The Councils will receive all the benefit of income generated from Energy and will negotiate a sharing mechanism for third party waste and any other third party income stream (e.g. recyclates).

10. Definition of Contract Waste

The definition of Contract Waste will include all municipal solid waste. Street sweepings will be excluded from the definition of Contract Waste.

11. Maximum Tonnage

The maximum tonnage each Council will be permitted to send to the EFW Facility each year will be the proportion of the overall Maximum Tonnage which the Contractor is obliged to accept from the Councils which is equal to each Council's Project Share Percentage. For example if one Council's Project Share Percentage is 50% and the overall Maximum Tonnage which the Contractor is obliged to accept from the Councils is 150,000 tonnes, that Council's Maximum Tonnage will be 75,000 tonnes.

12. Excess Waste and Spare Capacity

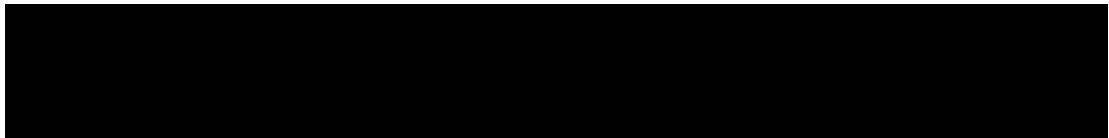
Excess Waste

The Contractor will be obliged to accept Contract Waste above the Maximum Tonnage (but the Councils will not be obliged to send it to him). If this waste cannot be processed at the EFW Facility it will be charged to the Councils as a pass through cost on a basis of the rate for Excess Waste to be set by the Contractor as part of the Contractor's bid.

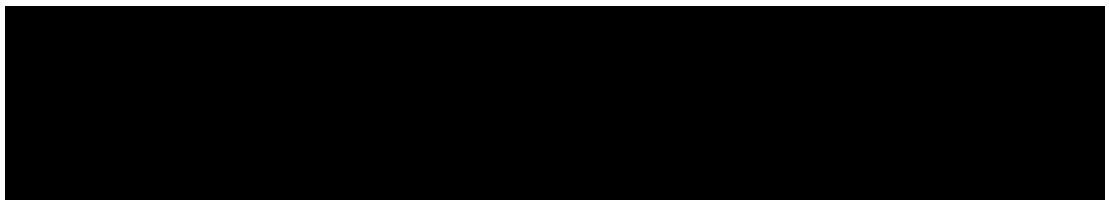
Spare Capacity

Any capacity not used by one Council may be used by the other Council. The detailed mechanism to administer this principle is to be developed.

13. Guaranteed Minimum Tonnage



14. Exclusivity



15. Residual Value of the Facility and Site

The Contractor will be required to hand the EFW Facility back with a residual life of 5 years and all contamination it has caused (relative to the baseline established at contract execution) remediated.

All Council's will share in the residual value of the EFW Facility and the Site and any decommissioning costs not taken by the Contractor at the end of the contract in accordance with the Project Share Percentage.

The Councils will attempt to reach agreement on a future course of action regarding the use or otherwise of the EFW Facility following expiry of the Contract at least 5 years prior to the expiry of the Contract. Unless the Councils agree otherwise if no other course of action is agreed unanimously between the Councils at least one year prior to the expiry of the Contract (e.g. award of another operating contract, one Council buying out the other

Councils' interest), the Site will be sold as soon as possible after expiry and the proceeds from the sale divided between the Councils' in accordance with their respective Project Share Percentage.

16. Liability Issues

Each Council will be liable for any indemnity claim from the Contractor arising as a result of damage attributable to that Council.

PART 5

PROJECT OBJECTIVES AND CRITERIA

The following are the high level objectives of the project and criteria for success.

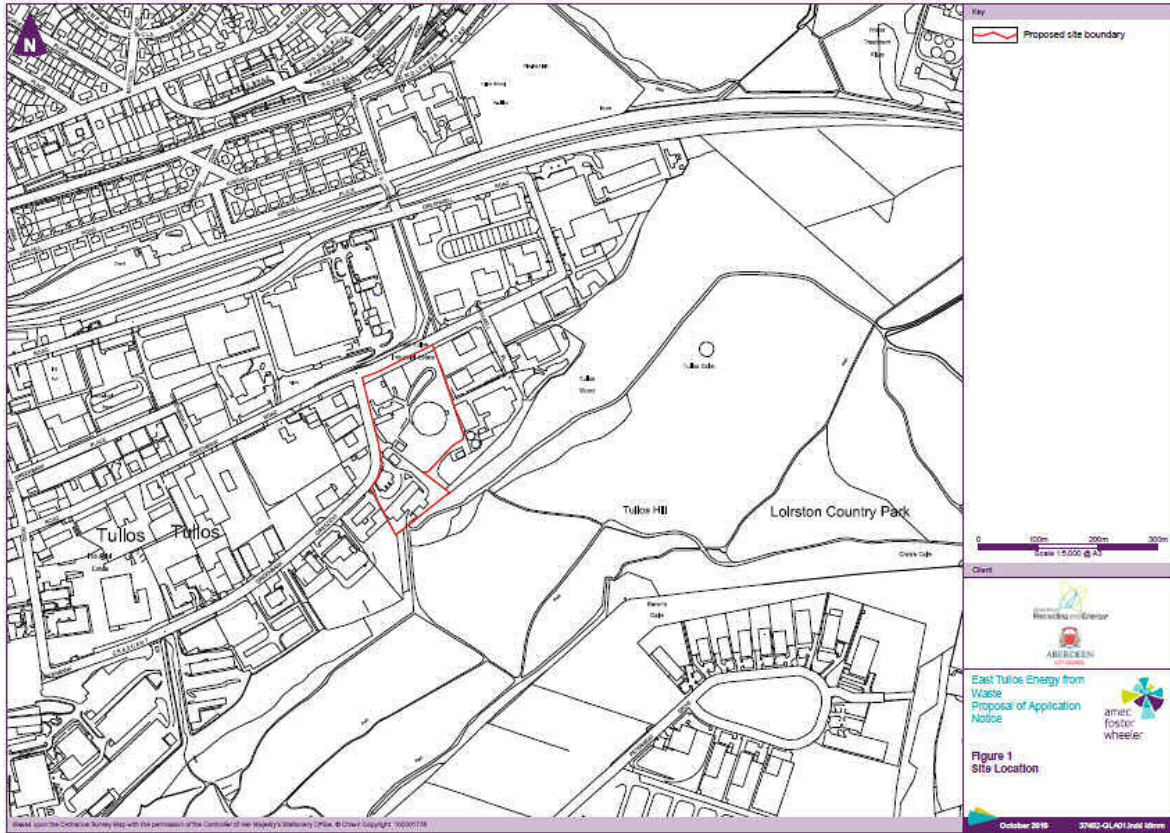
Objectives:

To provide an affordable, reliable solution for the management of residual municipal waste post 2021

Criteria to be met:

- The solution allows the Councils to move away from landfill within the statutory time limits or as soon as possible thereafter
- The solution is economical and tax efficient with the long term price of waste disposal being predictable, smooth and secure.
- The solution must be deliverable in political, planning, technical, commercial and environmental terms
- The project delivers a local solution that delivers benefits to the North East (local defined as within the 3 authority areas) including jobs, heat and power.
- The solution ensures that the energy produced fully and fairly benefits the Councils and where appropriate the communities served by the Councils
- The project (including during the operational phase) is accountable to the three partner Councils
- The solution recognises partnership working with the risks and benefits being shared in proportion to the partners' contributions
- The solution includes reliable technology with a proven track record
- The solution is provided by a Contractor with a proven track record
- The solutions is a facility capable of meeting Necessary Consents (Planning & Permitting)
- The facility optimises thermal efficiency levels in order to meet SEPA's Thermal Treatment Guidelines with minimal impact on electricity revenue
- The solution is able to cope with a wide range of input material calorific values (CV) to address changing waste composition over the project's lifetime
- The project attracts maximum competition in order to secure best value;
- The solution does not interfere with achieving best practicable levels of source segregated recycling;
- The solution must be commercially understandable and acceptable to the various market players, minimising and transferring or sharing risks with the contractor where appropriate; and
- The solution encourages innovation and optimises post-processing recycling and recovery.

Part 6
SITE PLAN



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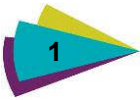
Aberdeen City Council

Addendum to Energy from Waste Business Case



November 2015

Amec Foster Wheeler Environment
& Infrastructure UK Limited



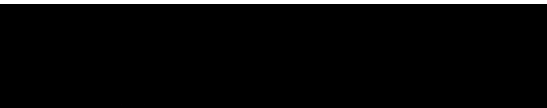
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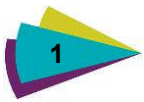
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Management systems

This document has been produced by Amec Foster Wheeler Environment & Infrastructure UK Limited in full compliance with the management systems, which have been certified to ISO 9001, ISO 14001 and OHSAS 18001 by LRQA.

Document revisions

No.	Details	Date
1	Draft Report	October 2015
2	Final Report	November 2015

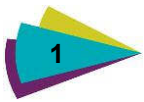


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Appendix A	Waste Flow Model Assumptions 2015
Appendix B	EY Value for Money Report



1. Introduction

This section outlines the purpose and context for this report, the scope of work and the various options that are appraised.

1.1 Purpose of Report

Amec Foster Wheeler Environment & Infrastructure UK Limited (hereafter 'Amec Foster Wheeler') was appointed by Aberdeen City Council (ACC) in November 2013 to provide a Business Case (referred to as 2013 Business Case in this report) for the development of an Energy from Waste (EfW) facility as a waste treatment solution for the City's residual municipal solid waste (rMSW). The Council had previously produced an Outline Business Case for Waste Facilities in October 2012.

This Addendum addresses the changes to the modelling inputs since the 2013 Business Case, and sets out the overall results. It is not a stand-alone business case and should be read in conjunction with both the 2012 Outline Business Case and 2013 Business Case.

1.2 Context

The 2013 Business Case considered a series of options for the development including the development of a stand-alone plant sized for ACC alone, a larger EfW which could also accept rMSW from a neighbouring authority, or with a pre-treatment facility with all rMSW exported to an existing facility in Northern Europe. The recommendations arising from this study were primarily;

- ▶ Secure support for a Large EfW
- ▶ Secure site for new EfW
- ▶ Develop procurement strategy
- ▶ Research and develop RDF contingency arrangements
- ▶ Keep a watching brief on potential changes in law and policy

Since the Energy from Waste Business Case was issued, discussions have been ongoing between ACC and Aberdeenshire and Moray Councils and in principle the Authorities have decided to work together to progress a joint solution. A site within East Tullos Industrial Estate has been identified for the development and is now in the process of being purchased from SGN by ACC prior to an application for planning permission.

The 2013 Business Case now requires to be updated to reflect the recent activities and test the joint working option against the other original options to ensure it remains the preferred solution and offers all three Authorities value for money.

1.3 Scope of Work

As defined in Amec Foster Wheeler's proposal (e-mailed to the Council on 1st July 2015), the scope of works comprises modelling of waste flows and cost base for three options:

- ▶ EfW sized for Aberdeen City Council only
- ▶ The continued use of RDF export for Aberdeen City Council through use of the Altens RDF Facility post SITA contract.
- ▶ A joint Authority EfW for Aberdeen City Council, Aberdeenshire Council and Moray Council

The Private-Public Partnership (PPP) variants on these options have not been refreshed as the current preference is for a Council funded option (albeit the previous general findings in terms of differential factors between the various funding options would still apply).

Ernst and Young was appointed by the Council to undertake financial modelling, based on the mass flow and cost assumptions provided by Amec Foster Wheeler. Their report is provided in **Appendix 2**.

1.4 Outline of Options

The modelling of waste flows and costs undertaken for the 2012 Outline Business Case and 2013 Business Case, provided detail on five options. Three of these have been updated within this Addendum as set out below.

Option One (Small EfW, Council financed):

To develop a facility on a site identified within the Council's boundary with the purpose of treating Aberdeen's residual waste arisings. The capital investment to provide this facility would be funded directly by the Council, and a partner waste contractor engaged to manage the facility's operational activities on the Council's behalf. It offers the potential benefit of renewable energy generation within the City. It would not include front end mechanical treatment (MT) due to the potential for exemption under the Thermal Treatment Guidelines.

Option Two (Small EfW, PPP financed):

NOT REMODELLED

Option Three (Large EfW, Council financed):

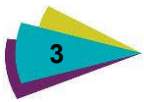
As option 1, with a larger EfW facility that is sized to take other residual waste. This other waste is assumed to be Aberdeenshire Council (70 ktpa) and Moray Council (20 ktpa), but could also include some commercial and industrial wastes. With this option the MT facility need not be co-located with the EfW, as this could take place at the waste source, with the EfW being constructed at a suitable central site. As above, exemption from further pre-treatment of residual waste could be obtained by all three Councils. The capital investment to provide this facility would be funded directly by the Council and a partner waste contractor engaged to manage operations;

Option Four (Large EfW, PPP financed):

NOT REMODELLED

Option Five (RDF offtake):

The Council has been progressing an interim treatment solution comprising the preparation of waste as Refuse Derived Fuel (RDF) prior to export to European EfW facilities. The business case considers this waste treatment option also as a long term solution, assessing whether the cost of this waste management practice would provide better value for money.



2. Technical Modelling

This section considers updated costings for each of the Options using the outputs from mass flow modelling to inform an outline financial appraisal.

2.1 Mass Flow Modelling

The previous technical note on the underlying modelling undertaken by Amec Foster Wheeler has been updated (see **Appendix 1**) and includes a summary of key inputs.

The required EfW facility size for Option 1 is 60,000 tonnes per year, and a similar tonnage from ACC requires pre-treatment and RDF offtake in Option 5.

For Options 3 the rMSW inputs are;

- ▶ **Aberdeen City Council** – annual tonnages with waste growth and changes in recycling rates etc as previously modelled (e.g. no major updates to the detailed mass flow model ACC Profile Model V11 – 20130918)
- ▶ **Moray Council** - a fixed 20ktpa. Note that their underlying consultant's report has slightly more total residual waste arisings, but it will not all be suitable for thermal treatment hence the difference.
- ▶ **Aberdeenshire Council** - a fixed 70ktpa

The previous modelling assumed a generic additional input of 62,000 tonnes per year in addition to ACCs rMSW, resulting in a total EfW facility size of 109,000 tonnes per year. Amec Foster Wheeler not developed detailed mass flow models for the other two partner Councils and have utilised fixed annual tonnage based on their stated requirements. The updated tonnages result in a larger EfW solution would accept up to **150,000 tpa**, and this is what the planning application is being based upon. Any surplus capacity within a 150ktpa plant would be taken up by third party waste, but no revenue from this is assumed in order to test the option is still viable without reliance on income from third parties.

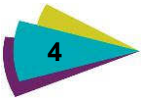
2.2 Project Timetable

The timing assumptions for the options appraisal were updated from the 2013 Business Case to reflect the intervening period, and are as follows:

- ▶ Whilst SITA are contracted to provide services until 2025 the Council has the option to take out residual waste at any time. Purely for the purposes of this assessment, all options have been assumed to commence full operations in the year 2022, and have been assessed over a 25 year period to 2047;
- ▶ Options 1 and 3 –. New EfW procured and constructed by 2022;
- ▶ Option 5 –Long term export of RDF from 2022. It is assumed that a new offtake contract would be entered into on equivalent terms.

The project timescales will be driven by 4 principal drivers:

- ▶ The Waste (Scotland) Regulations 2012 requirement banning biodegradable waste going directly to landfill from 2020;
- ▶ The level and capability of resourcing within the Council's project team and governance structure;
- ▶ The programme and timescales set out for the procurement process; and



- ▶ The time taken to physically deliver each option. The highest uncertainty and risk is associated with construction of a new EfW.

3. Financial Appraisal

This section considers updated costings for each of the Options using the outputs from mass flow modelling to inform an outline financial appraisal.

3.1 Approach

Ernst and Young was appointed by the Council to undertake financial modelling, based on the mass flow and cost assumptions provided by Amec Foster Wheeler.

A recent report for Aberdeenshire on waste management options (SLR, May 2015) utilised WRAP gate fees which helped inform the case for joint working. This addendum applies the previous approach of bespoke financial modelling for a new facility, allowing the generation of a project specific gatefee by the financial advisors.

Each of the three options has been refreshed using updated reference data held by Amec Foster Wheeler on Capex, Opex, Income and Lifecycle costs, plus any site specific data available on site purchase/development costs. A summary of the cost assumptions is provided in the section below. The costs exclude fees for investigations into site specific costs with utility providers, and site specific bills of quantities for a new facility. It is recommended that parallel research is undertaken into these elements in order to utilise better base data in the financial modelling, or that a further refresh of the business case is undertaken in 2016 once these items have been fully costed.

The financial modelling assumes a revenue from an electricity only output i.e. the Council would not elect to make use of heat produced from any EfW plant by feeding it to a CHP. The benefits of CHP are discussed in the 2013 Business Case. No costs for a CHP pipeline have been included in the modelling as any additional capital expenditure would typically be expected to be covered by the heat income.

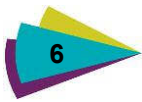
There are also a number of “one off” costs that could also apply to Options 1 relating to the particular site. Pending further site studies, it has been assumed that the grid connection and site preparation costs are similar to other UK plants within Amec Foster Wheeler’s cost database, and are therefore included in the modelling.

3.2 Revised Design and Cost Assumptions

The design and cost assumptions regarding the subsequent EfW or RDF export outlet are set out in Table 3.2.

Table 3.1 Key EfW Input Assumptions

Item	Assumption
Option 1 & 2 - Small EfW	
Long term residual Waste throughput (Tonnes)	55,733
Design Throughput of Facility (Tonnes)	60,000
Capital Expenditure	£55,729,143 (excludes inflation and financing costs)
Maintenance per annum	£3.62 per tonne
LifeCycle per annum	£2.79 per tonne
Operating Cost Variable per annum	£19 per tonne
Operating Cost Fixed per annum	£21 per tonne



Item	Assumption
Calorific value of rMSW	7.7 MJ/kg
Option 3 & 4 - Large EfW	
Maximum residual Waste (Tonnes)	145,733
Design Throughput of Facility (Tonnes)	150,000
Capital Expenditure	£138,861,985 (excludes inflation and financing costs)
Maintenance per annum	£6.46 per tonne
LifeCycle per annum	£4.97 per tonne
Operating Cost Variable per annum	£19.08 per tonne
Operating Cost Fixed per annum	£9.91 per tonne
Calorific value of rMSW	7.7 MJ/kg
Option 5 – RDF offtake	
Capital Expenditure (RDF Mechanical Treatment plant)	£? (excludes inflation and financing costs)
Baling and Wrapping	£10 per tonne
Gate Fee at Swedish plant	£82 per tonne (Free on board)
Sea transport & handling	£0 per tonne (assumes no backload available for free)
Licensing (TFS)	£4,000 per year

Note: Costs are quoted at 2015 prices (e.g. excluding future inflation), and represent underlying inputs to the financial modelling

3.3 Sensitivity Modelling

A number of financial sensitivities have been generated for E&Y the financial advisor;

- ▶ Capex -10% and +30%
- ▶ Opex -10% and +10%
- ▶ RDF offtake +50%

Within the last Business Case another 2 sensitivities were undertaken on Waste Growth (-10%, +10%) and Recycling (65%). These only affect the annual facility throughputs. It is not considered that they would affect the relative ranking of the options, and for the purpose of this high level refresh have not been remodelled.

The key technical sensitivity model for the original Business Case was the inclusion or exclusion of a Mechanical Treatment (MT) facility before the residual waste was thermally treated in a new EfW. The general findings of this still stand, and due to the evolving policy context the use of MT has not been utilised for this refresh of the EfW cases (Option 1 & 3), but is included in the RDF case (Option 5)

The 2013 Business Case discussed the options available and the related risks to make a recommendation on a way forward for the next 25 years. Background information, Procurement routes, Management Structures and a projected Timetable were also provided so that the document could form the basis of a Descriptive Document. This wider analysis has not been updated as part of this Addendum.

3.4 Revised Financial Modelling

The financial assumptions and results are set out in **Appendix B** together with supporting comments.

Key assumptions on third party income are:

- ▶ Third party Waste has been priced at £65/t for spare capacity.

- ▶ Electricity has been priced at £47/MWh and indexed at 2.5%. This is slightly more aggressive than typical bank funding but comfortable for the current market placement on power price.

Key assumptions on indexation and funding terms are:

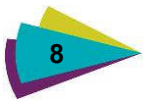
- ▶ Treasury Green Book advice has been applied where appropriate
- ▶ The project has been costed on a operating life of 25 years, in line with other waste project financial models currently in the market
- ▶ Inflation at 2.5% in line with Treasury Green Book, unless specific aspects of the project suggest using a higher rate e.g. capital costs at 4.5%, RDF export at 3%.
 - ▶ Risk / Optimism Bias has been based on the financial consultants experience with similar waste related projects as per the 2013 Business Case.

The total net present value (NPV) of each option uses a standard 3.5% discount rate.

The summary results are set out below. The sensitivity results are shown in **Appendix B**.

Table 3.2 Results – Base Case

Item	Option 1 - 60 kpta EfW	Option 3 - 150 kpta EfW	Option 5 - MT & RDF
	£000	£000	£000
Total Nominal Price	290,710	247,967	283,880
Total NPV	98,818	84,793	84,411
	£	£	£
Gate fee per tonne (year 1 operations)	187	161	143



4. Conclusions

The financial assessment of options re-confirms the previous conclusion that a larger EfW delivers the best value for money solution in the long term.

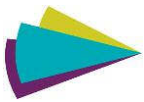
The analysis broadly follows the expected convention that a larger EfW facility gives a lower nominal price than a small one, with Option 3 having a 15% lower NPV over 25 years than Option 1, based on the stated assumptions.

In the event that a larger EfW was not deemed deliverable, the next ranked option in terms of total NPV is Option 5 (MT & RDF), with total NPV comparable to Option 3 (3% higher). RDF export is a competitive option for the Council in the short to medium term. However following the end of the current RDF contract there will be an unquantifiable risk of increases in gate fee (as more waste producers seek to access a fixed number of energy from waste outlets). In contrast Option 1 and 2 will allow a stable gate fee price over the length of the contract following the construction phase.

A smaller scale EfW facility (Option 1) would be the most expensive option in NPV terms. However with both Options 1 and 3, once the borrowing has been re-paid the EfW facility would benefit from a step-down in the price per tonne for ongoing operations. The Council would be in ownership of a strategic asset which could offer a continued service at much reduced rates, in a similar way that other UK authorities are currently benefiting from operating older EfW facilities.

The 25 year NPV of the options tends to hide the relative changes in future costs over time, due to discounting effects on payments in later years. In those later years the budgetary impacts of high prices could place added financial burdens on the Council, albeit the overall 25 year project cost is still value for money. In terms of annual gate fees, Option 5 RDF offtake could be lower than Option 3 until about the year 2028, and lower than Option 1 until around the year 2036. After these points the respective EfW options have lower gate fees than RDF offtake. The RDF offtake price and the future inflation assumptions have a key influence on the cross over point between the options.

A number of critical documents will emerge during any procurement this could impact upon final designs and costs of the new EfW, including EU Best Available Techniques reference documents due in 2016. The legislation and guidance controlling the pre-treatment and export of RDF is also likely to evolve over coming years. Finally any future introduction of EU incineration taxes or other changes in law could impact upon the deliverability and costs of each option.



Appendix A

Waste Flow Model Assumptions 2015

1. Aberdeen Waste Flow Model

This paper sets out the modelling assumptions made by Amec Foster Wheeler in support of the options assessment.

The basis of the Waste Flow Model (WFM) is the data by Aberdeen City Council provided in “ACC Profile Model V11 - 20130918.xlsx”.

The waste flow model was developed to replicate the tonnages projected by ACC, and we have not attempted to check the appropriateness of the underlying capture assumptions. No time was allowed to look at the sensitivity of waste composition versus participation and recognition. The ACC projected capture rates appear challenging. Given the absence of a waste sort composition for Aberdeen further work is recommended as the project proceeds.

2014 data was the starting point for the WFM. We have replicated the entire model and provide comments below. Modelled waste arisings match those provided by Aberdeen City.

The data provided by ACC indicates 54% in 2025 for ACC recycling and 7.4% from further “picking” operations totalling 61.4%. ACC have modelled 65.7% diversion rate for the HWRC as a new HWRC is commissioned and/or improvements to other HWRCs are achieved. There is no HWRC picking line modelled in the WFM from 2016 onwards when the new HWRC is commissioned.

Post issuance of the ACC data it was decided to route the HWRC residual waste to the MT plant in Option 5. Further instructions were to minimise the cost of the MT plant and capture metals and dense plastics (as per SITA proposal for the interim SRF market solution).

The projected recycling & composting rate including the MT plant in the WFM is 56.4% (2025), which is below the ACC modelled rates. This rate does not include IBA metals (which are expected to be minimal as metals are captured at the MT plant). Excluding the MT plant contribution, the recycling & composting performance in the WFM is 53.6% (2025).

2. Housing Types

For modelling purposes we have extracted data from <http://www.gro-scotland.gov.uk/files2/stats/household-estimates/he-12/2012-estimates-households-dllings-Scotland.pdf>.

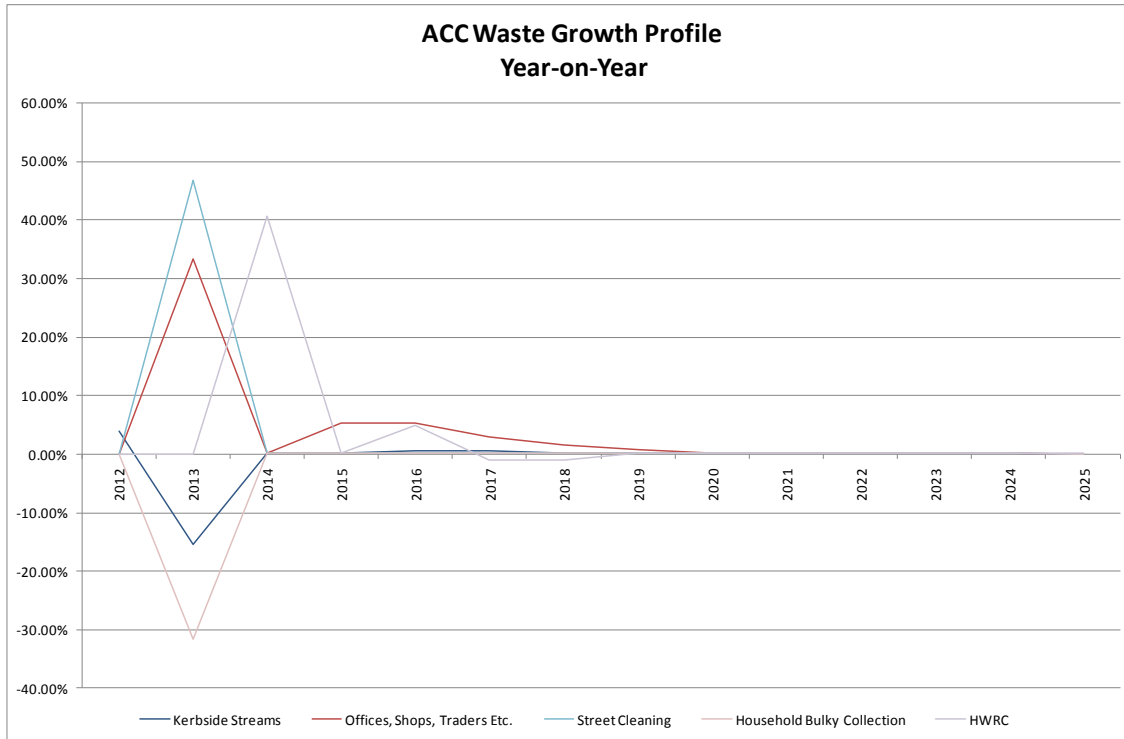
	Aberdeen City		AMEC model
Flats	55%	HG1(gardened properties)	27%
Terraced	18%	HG2 (garden flats)	5.4%
Semi-detached	17%	HG3 (flats without gardens)	49%
Detached	11%	HG4 (Terraced properties without gardens)	17.8%

We have assumed that 10% of the flats have gardens.

3. Growth

For kerbside household waste this is 3.9% growth in 2013, (minus) -15.38% growth in 2014, 0.15% (2015), 0.2% (2016), 0.6% (2017), 0.61% (2018) and 0.25% from 2019 to 2025 and 0% from 2026 onwards as provided by Aberdeen City “ACC Profile Model V11 - 20130918.xlsx”.

The non-kerbside streams have different growth profiles.



4. Composition

We have used Edinburgh kerbside waste composition, with adjustments to cater for the current garden waste capture and the projected dry recyclables capture, i.e. we increased the relative concentrations of the targeted dry recyclables over that in Edinburgh (45.6% versus 38.3%). This suggests that either the composition data is incorrect or the capture rates in the ACC model are overly ambitious.

We have assumed that all housing types generate the same quantities of waste (except garden waste) tpa/household.

Assumed waste composition

Waste component	Sub-component	HOUSING GROUP 1 & 2	HOUSING GROUP 3 & 4
Paper	Newspapers	8.07%	11.25%
Paper	Magazines	5.19%	7.84%
Paper	Other Recyclable Paper	1.73%	2.61%
Paper	Paper Packaging	0.00%	0.00%
Paper	Non-recyclable Paper	2.89%	4.36%
Card	Liquid Cartons	0.24%	0.36%
Card	Board Packaging	1.87%	2.82%
Card	Card Packaging	1.74%	2.63%
Card	Other Card	0.21%	0.32%
Dense Plastic	Plastic Bottles	2.85%	4.31%
Dense Plastic	Other Dense Plastic Packaging	1.47%	2.22%
Dense Plastic	Other Dense Plastic	0.71%	1.07%
Plastic Film	Other plastic film	0.36%	0.54%
Plastic Film	Packaging film	1.41%	2.12%



Waste component	Sub-component	HOUSING GROUP 1 & 2	HOUSING GROUP 3 & 4
Textiles	Textiles	1.34%	2.03%
Textiles	Shoes	0.23%	0.35%
Glass	Glass Bottles	9.14%	13.79%
Glass	Glass Jars	0.00%	0.00%
Glass	Other Glass	0.14%	0.22%
Miscellaneous Combustibles	Treated Wood	0.14%	0.21%
Miscellaneous Combustibles	Untreated Wood	0.02%	0.03%
Miscellaneous Combustibles	Furniture	0.90%	1.36%
Miscellaneous Combustibles	Disposable Nappies	1.44%	2.17%
Miscellaneous Combustibles	Other Miscellaneous Combustibles	2.35%	3.54%
Miscellaneous Combustibles	Carpet and Underlay	1.44%	2.18%
Miscellaneous Non-combustibles	Construction and Demolition	1.33%	2.01%
Miscellaneous Non-combustibles	Other Miscellaneous Non-combustibles	0.46%	0.70%
Ferrous Metal	Ferrous food	0.79%	1.19%
Ferrous Metal	Ferrous beverage cans	0.00%	0.00%
Ferrous Metal	other ferrous metal	0.40%	0.61%
Non-ferrous metal	Non-ferrous food	0.20%	0.30%
Non-ferrous metal	Non-ferrous beverage cans	0.00%	0.00%
Non-ferrous metal	Other non ferrous metal	0.40%	0.61%
WEEE	white goods	0.00%	0.00%
WEEE	Large electronic goods	0.00%	0.00%
WEEE	TV's and monitors	0.00%	0.00%
WEEE	Other WEEE	0.00%	0.00%
Hazardous	Household Batteries	0.00%	0.00%
Hazardous	Car Batteries	0.00%	0.00%
Hazardous	Engine Oil	0.00%	0.00%
Hazardous	Other potentially hazardous	0.00%	0.00%
Hazardous	Identifiable clinical waste	0.00%	0.00%
Organic non-catering	Garden Waste	32.95%	0.00%
Organic non-catering	Soil	0.00%	0.00%
Organic non-catering	Other Organic	0.18%	0.00%
Organic catering	Home compostable Kitchen Waste	8.47%	12.78%
Organic catering	Non-home compostable Kitchen Waste	7.75%	11.69%
Fines	Fines	1.18%	1.78%
		100.0%	100.0%



5. Kerbside Recycling

5.1 Dry Recycling

Current System coverage & participation– kerbside sort

HG1 2012 to 2015

- ▶ Coverage 100%
- ▶ Participation 32% to 32.6%

HG2 2012 to 2015

- ▶ Coverage 100%
- ▶ Participation 32% to 32.6%

HG3 2012 to 2014

- ▶ Coverage 100%
- ▶ Participation 56.5% to 30.9%

HG4 2012 to 2014

- ▶ Coverage 100%
- ▶ Participation 56.5% to 30.9%

Future System coverage & participation– kerbside comingled

HG1 2016 onwards

- ▶ Coverage 100%
- ▶ Participation rising to 56.9%

HG2 2016 onwards

- ▶ Coverage 100%
- ▶ Participation 56.9%

HG3 2015 onwards

- ▶ Coverage 100%
- ▶ Participation rising to 33.3%

HG4 2015 onwards

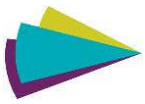
- ▶ Coverage 100%
- ▶ Participation rising to 33.3%

Targeting & Recognition of kerbside Dry Recyclables



Targeted Dry Recyclables	2012 - 2014	2015	2017 onwards
Newspapers	100%	100%	100%
Magazines	100%	100%	100%
Other Recyclable Paper	100%	0%	100%
Paper Packaging	100%	0%	0%
Liquid Cartons	100%	100%	100%
Board Packaging	100%	100%	100%
Card Packaging	100%	100%	100%
Other Card	100%	0%	100%
Plastic Bottles	100%	100%	100%
Other Dense Plastic Packaging	0%	100%	100%
Other Dense Plastic	0%	100%	100%
Textiles	0%	100%	100%
Shoes	0%	100%	100%
Glass Bottles	100%	100%	100%
Glass Jars	100%	100%	100%
Ferrous food	100%	100%	100%
Ferrous beverage cans	100%	100%	100%
Non-ferrous food	100%	100%	100%
Non-ferrous beverage cans	100%	100%	100%

Dry Recyclables Recognition	2025
Newspapers	94%
Magazines	95%
Other Recyclable Paper	50%
Liquid Cartons	80%
Board Packaging	53%
Card Packaging	53%
Other Card	44%
Plastic Bottles	90%
Other Dense Plastic Packaging	52%
Other Dense Plastic	25%
Textiles	59%
Shoes	59%
Glass Bottles	90%
Glass Jars	90%
Ferrous food	85%
Ferrous beverage cans	90%
Non-ferrous food	85%
Non-ferrous beverage cans	90%



5.2 Garden & Food waste

HG1 2012 to 2015:

- ▶ 100% coverage
- ▶ 90.1% to 94.3% Participation
- ▶ Recognition garden waste 95%
- ▶ Recognition food waste 63%

5.3 Garden

HG1 2016 onwards

- ▶ 100% coverage
- ▶ Participation 78.9% rising to 79.1%
- ▶ Recognition garden waste 95%

HG2 2016 onwards

- ▶ 100% coverage
- ▶ Participation 72% rising to 75%
- ▶ Recognition garden waste 95%

5.4 Food waste

HG1 2016 onwards:

- ▶ 100% coverage
- ▶ Participation 78.9% to 79.1%%
- ▶ Recognition food waste 63%

HG2 2014 onwards:

- ▶ 100% coverage
- ▶ Participation 78.9% to 79.1%%
- ▶ Recognition food waste 63%

HG3 2014 onwards:

- ▶ 100% coverage
- ▶ Participation 30%
- ▶ Recognition food waste 63%

HG1 2014 onwards:

- ▶ 100% coverage
- ▶ Participation 30%
- ▶ Recognition food waste 63%



5.5 Overall performance

Recycling & composting rate including MT plant is 56.4% (2025). This does not include IBA metals (which are expected to be minimal as metals are captured at the MT plant).

Without the MT plant, the recycling & composting performance is 53.6% (2025).

Note: These rates are below the performance data provided by Aberdeen City “ACC Profile Model V11-20130918.xlsx” which indicates 54% in 2025 for ACC recycling and 7.4% from further “picking” operations totalling 61.4%. This is because post issuance of the ACC data it was decided to route the HWRC residual waste to the MT plant. Further instructions were to minimise the cost of the MT plant and capture metals and dense plastics (as per SITA proposal for the interim SRF market solution). This means that the MT plant performance is NOT as good as the ACC modelled “picking line”.

6. Residual Waste Management

Three residual waste management options have been modelled:

- ▶ **Option 1:** EfW sized for Aberdeen City Council only.

To develop a facility on a site identified within the Council’s boundary with the purpose of treating Aberdeen’s residual waste arisings. This would include front end mechanical treatment (MT) to recycle plastics and metals, and remove inert fraction, as preparation for an Energy from Waste (EfW) facility in line with Scottish Government requirements. The capital investment to provide this facility would be funded directly by the Council, and a partner waste contractor engaged to manage the facility’s operational activities on the Council’s behalf. It offers the potential benefit of renewable energy generation within the City.

- ▶ **Option 3:** A joint Authority EfW for Aberdeen City Council, Aberdeenshire Council and Moray Council Option 1 EfW (Aberdeen County Council).

As Option 1, with a larger EfW facility that is sized to take other residual waste. This other waste could be sourced from other public sector bodies or commercial and industrial wastes. With this option the MT facility need not be co-located with the EfW, as this could take place at the waste source, with the EfW being constructed at a suitable central site. The capital investment to provide this facility would be funded directly by the Council and a partner waste contractor engaged to manage operations.

- ▶ **Option 5:** The continued use of RDF export for Aberdeen City Council through use of the Altens RDF Facility post SITA contract.

The Council is currently progressing an interim treatment solution comprising the preparation of waste as Refuse Derived Fuel (RDF) prior to export to European EfW facilities. The business case considers this waste treatment option also as a long term solution, assessing whether the cost of this waste management practice would provide better value for money.

Projected arisings of residual waste are 73,292 tpa (2015) falling to 55,733tpa as kerbside performance improves.

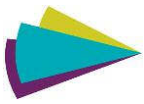
For Option 3 we have assumed the additional residual waste tonnages:

- ▶ Moray Council 20,000 tpa; and
- ▶ Aberdeenshire Council 70,000 tpa.

6.1 Option 5 MT (Mechanical Treatment) + RDF

A 75,000 tpa capacity MT plant is assumed to have been already provided under the current contract with SITA from 2022. The overall performance of the MT plant as modelled is:

- ▶ 6.2% recycling (2025)
- ▶ 83.3% RDF (2025)



- ▶ 10.5 % landfill (2025) (overall 5.4% of MSW to landfill)

This is based on the following material captures (metals):

- ▶ Plastic Bottles 70%
- ▶ Other Dense Plastic Packaging 10%
- ▶ Other Dense Plastic 10%
- ▶ Ferrous 83%
- ▶ Non-ferrous 80%

RDF output is 46,452 tpa.

Modelling Notes: In the tab "Model Data MT RDF" of the workbook ACC WFM AMEC V8 RDF rev 0 the MBT model facility is used as a surrogate for the Residual Waste MT in this model because the MT model facility was previously allocated to a HWRC Residual Waste MT plant. In the EfW options there is NO Residual Waste MT facility modelled.

6.2 Option 1 and 3 EfW (Energy from Waste)

For modelling purposes as the bottom ash and APC residues are treated off-site by a 3rd Party. The EfW performance is assumed to be:

- ▶ % Combusted 71%
- ▶ % Fly Ash 4%, of which;
 - ▶ Fly Ash recycled 100% (to remove landfill costs associated with ash from the model as a "gate-fee" for ash handling is assumed in the EfW cost model.
 - ▶ Fly Ash landfilled 0% (to remove landfill costs associated with ash from the model as a "gate-fee" for ash handling is assumed in the EfW cost model.
- ▶ Bottom Ash 25%, of which
 - ▶ Bottom Ash recycled 100% (to remove landfill costs associated with ash from the model as a "gate-fee" for ash handling is assumed in the EfW cost model.
 - ▶ Bottom Ash landfilled 0% (to remove landfill costs associated with ash from the model as a "gate-fee" for ash handling is assumed in the EfW cost model.
- ▶ Electricity Production (output):
 - ▶ 323 kWh(e) / te (for 60ktpa EfW based on NCV of 7.74MJ/kg and net electrical efficiency of 15%)
 - ▶ 430 kWh(e) / te (for 60ktpa EfW based on NCV of 7.74MJ/kg, and net electrical efficiency of 20%)

7. Other Facilities

7.1 Windrow

- ▶ 12,000 tpa (All costing data removed from the model)

7.2 IVC (food)

- ▶ 13,000 tpa (All costing data removed from the model)

7.3 MRF

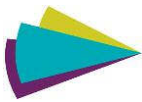
- ▶ 25,000 tpa (All costing data removed from the model)



8. Basis of Costs

8.1 Treatment Facilities

60,000 tpa EfW



EFW COSTS ESTIMATION					
Energy Services					
Valid for EFW projects 50 - 120ktpa					
Project	Aberdeen CC				
Reference	34149-02				
For	Steve Blackburn				
By	Brendan Sharpe				
Date	09 July 2015				
CAPEX ESTIMATE					
Waste Stream	MSW				
Waste CV	7.74	MJ/kg			
Capacity	60,000	tonnes/year			
Location	North East Scotland				
Location Costing Factor	95%	Costing Factor (relative to Base Case data)			
Tonnage Rating	7.5	tonnes per hour	8,000.00	Operating hours per year	
Thermal Capacity	16	MW(th) @	91%	Load Factor	
Electrical Output	2.4	MW(e) @	15%	Net Electrical Efficiency	
Electrical Output	19,362	MWh per year =	323	kWh(e) per tonne of waste	
Estimated EFW EPC Capex					
Thermal Element	£ 19	M			
Tonnage Element	£ 33	M			
Total EFW EPC Cost Estimate	£ 52	M	£ 870	per tonne/year capacity	
Capex estimates are accurate to +/- 50%					
Capex estimates do not include contingency margins					
MAINTENANCE ESTIMATE					
Lifecycle Replacement Costs	£ 0.2	M per year	£ 2.79		
Other Routine Maintenance Costs	£ 0.2	M per year (Annual Average over Lifetime)	£ 3.62		
Total Annual Average Maintenance Costs	£ 0.4	M per year =	£ 6	per tonne of waste feed	
OPEX ESTIMATE					
VARIABLE OPERATING COSTS (Purchase of consumables and disposal of residues)					
Consumables					
Lime	15.0	kg/tonne	188.07	per tonne	£ 169,267
Activated Carbon	1.0	kg/tonne	675.14	per tonne	£ 40,508
Ammonia (30% Solution)	4.0	kg/tonne	184.46	per tonne	£ 44,270
Process Water	0.6	m3/tonne	0.96	per m3	£ 34,721
Sodium Bicarbonate		kg/tonne	241.12	per tonne	£ -
Urea		kg/tonne	397.85	per tonne	£ -
By-Products Disposal					
Bottom Ash	25%	of Waste Feed @	24.18	per tonne	£ 362,699
FGT Residues	4%	of Waste Feed @	205.53	per tonne	£ 493,271
Total Variable Costs	£ 1,144,737	=	19.08	per tonne	
FIXED OPERATING COSTS (Staffing, environmental compliance, office admin costs, excludes insurance)					
Staffing	£ 1,051,828	per year			
Environmental Compliance	£ 120,900	per year			
Office Expenses	£ 48,360	per year			
Other Unspecified	£ 60,450	per year			
	£ 1,281,537	per year	21.36	per tonne of waste	
Excludes insurances					
SUMMARY OF O&M COSTS					
Variable Opex Estimate			19.08	per tonne of waste feed	
Fixed Opex Estimate			21.36	per tonne of waste feed	
			40.44	per tonne of waste feed	
Estimated Maintenance Cost Estimate			6.41	per tonne of waste feed	
Total O&M Cost Estimate			46.85	per tonne of waste feed	
REVENUES ESTIMATE					
Electricity Production	19,362	MWh per year			
Electricity Sale Price	£ 47	per MWh			
Electricity Sales Revenue	£ 910,014	per year =	15.17	per tonne of waste	

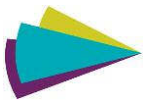


The NCV of the rMSW is on the low side, however this is estimated from the waste flow model and reflects the relatively high public recognition rate of paper and plastics (high calorific value) versus the lower recognition of food waste.



150,000 tpa EfW

EFW COSTS ESTIMATION						
Energy Services						
Valid for EfW projects > 120ktpa						
Project	Aberdeen CC					
Reference	34149-02					
For	Steve Blackburn					
By	Brendan Sharpe					
Date	09 July 2015					
CAPEX ESTIMATE						
Waste Stream	MSW					
Waste CV	7.74	MJ/kg				
Capacity	150,000	tonnes/year				
Location	North East Scotland					
Location Costing Factor	95%	Costing Factor (relative to Base Case data)				
Tonnage Rating	18.8	tonnes per hour	8,000.00	Operating hours per year		
Thermal Capacity	40	MW(th) @	91%	Load Factor		
Electrical Output	8	MW(e) @	20%	Net Electrical Efficiency		
Electrical Output	64,540	MWh per year =	430	kWh(e) per tonne of waste		
<u>Estimated EFW EPC Capex</u>						
Thermal Element	£ 48	M				
Tonnage Element	£ 87	M				
Total Final Capex Estimate	£ 135	M	£ 902	per tonne/year capacity		
Capex estimates are accurate to +/- 50%						
Capex estimates do not include contingency margins						
MAINTENANCE ESTIMATE						
Lifecycle Replacement Costs	£ 0.7	M per year	£ 4.97			
Other Routine Maintenance Costs	£ 1.0	M per year (Annual)	£ 6.46			
Total Annual Average Maintenance Costs	£ 1.7	M per year =	£ 11	per tonne of waste feed		
OPEX ESTIMATE						
VARIABLE OPERATING COSTS (Purchase of consumables and disposal of residues)						
Consumables						
Lime	15.0	kg/tonne	£ 188	per tonne	£ 423,168	
Activated Carbon	1.0	kg/tonne	£ 675	per tonne	£ 101,271	
Ammonia (30% Solution)	4.0	kg/tonne	£ 184	per tonne	£ 110,675	
Process Water	0.6	m3/tonne	£ 0.96	per m3	£ 86,804	
Sodium Bicarbonate		kg/tonne	£ 241	per tonne	£ -	
Urea		kg/tonne	£ 398	per tonne	£ -	
By-Products Disposal						
Bottom Ash	25%	of Waste Feed @	£ 24	per tonne	£ 906,748	
FGT Residues	4%	of Waste Feed @	£ 206	per tonne	£ 1,233,177	
Total Variable Costs	£ 2,861,843	=	£ 19	per tonne		
FIXED OPERATING COSTS (Staffing, environmental compliance, office admin costs, excludes insurance)						
Staffing	£ 1,257,357	per year				
Environmental Compliance	£ 120,900	per year				
Office Expenses	£ 48,360	per year				
Other Unspecified	£ 60,450	per year				
	£ 1,487,067	per year	£ 10	per tonne of waste		
Excludes insurances						
SUMMARY OF O&M COSTS						
Variable Opex Estimate			£ 19	per tonne of waste feed		
Fixed Opex Estimate			£ 10	per tonne of waste feed		
			£ 29	per tonne of waste feed		
Estimated Maintenance Cost Estimate			£ 11	per tonne of waste feed		
Total O&M Cost Estimate			£ 40	per tonne of waste feed		
REVENUES ESTIMATE						
Electricity Production	64,540	MWh per year				
Electricity Sale Price	£ 47	per MWh				
Electricity Sales Revenue	£ 3,033,380	per year =	£ 20.22	per tonne of waste		



The NCV of the rMSW is on the low side, however this is estimated from the waste flow model and reflects the relatively high public recognition rates of paper and plastics (high calorific value) versus the lower recognition of food waste.

Price basis is 2009 to which RPI inflation for EfW capex has been added. Benchmarked against more recent information.

For operating costs the inflation is based on Reagent Base Prices April 2008 (RPI from April 2008 to April 2015 20.6%). Note RPI all items is 20.9% from 2009 to 2015.

9. Other Costs

- ▶ Allowance for Grid connection £1,000,000.
- ▶ Allowance for Site purchase £2,200,000
- ▶ Allowance for relocation of culvert £500,000.
- ▶ Landfill Gate Fee £41.4/t : MT reject waste modelled to landfill. No wastes direct to landfill in EfW options.
- ▶ Special Waste Landfill Gate Fee £200/t – no waste modelled to Landfill.
- ▶ Landfill tax £82.6/t from 2015 remaining stable
- ▶ No transport costs modelled.

10. Income

- ▶ Electricity Sale Price £47/MWh. This is increased from the OBC 2013 and assumes a council funded option. It is note that a more conservative approach may be taken by bank/external sponsors.
- ▶ 3rd Party income for EfW headroom –none modelled by Amec Foster Wheeler.
- ▶ Income from recyclates modelled based on unit costs provided by ACC “[ACC Profile Model V7a.xlsm] tab Unit Costs. – All income from recyclables removed from the model.
- ▶ All paper and card £5/t income. – All income from recyclables removed from the model.
- ▶ All textiles £250/t income. – All income from recyclables removed from the model.
- ▶ All glass wood £5/t income. – All income from recyclables removed from the model.
- ▶ All metals (ferrous & non-ferrous) £250/t income – All income from recyclables removed from the model.



Appendix B EY Value for Money Report

See separate report submitted to the Council by Ernst & Young LLP on 7 August 2015 “*Aberdeen Waste Project VFM – Business Case update*”.



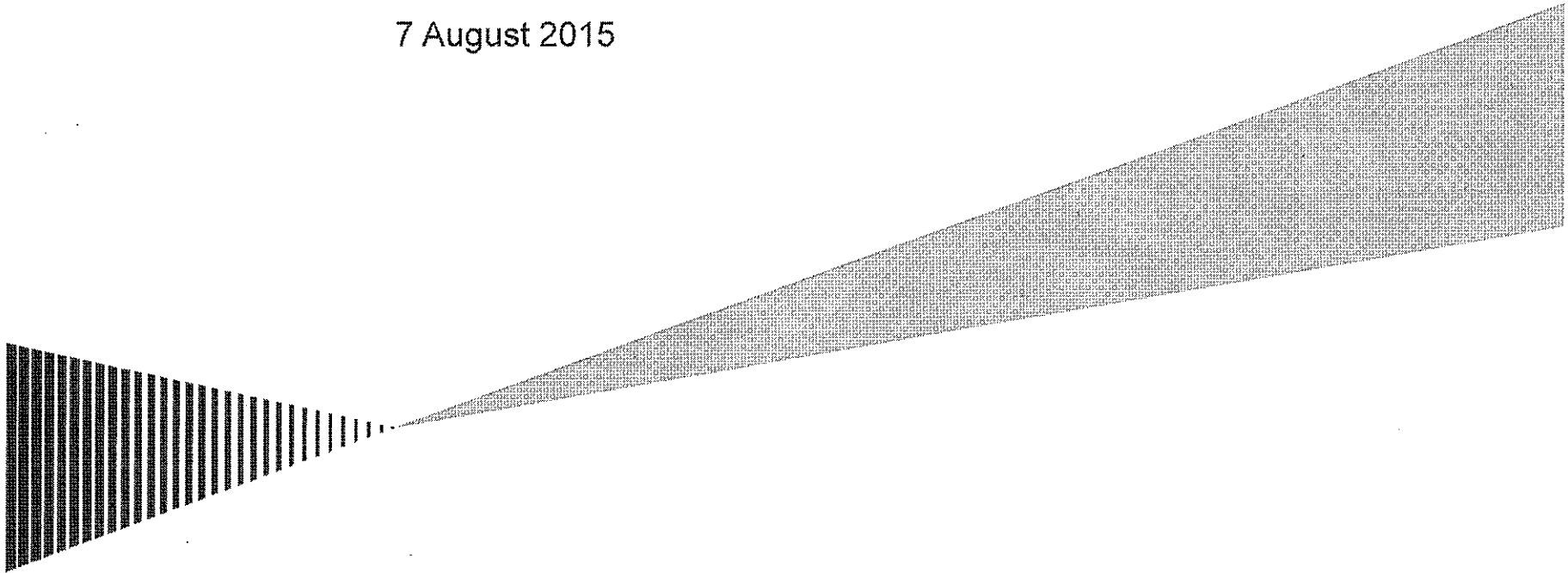
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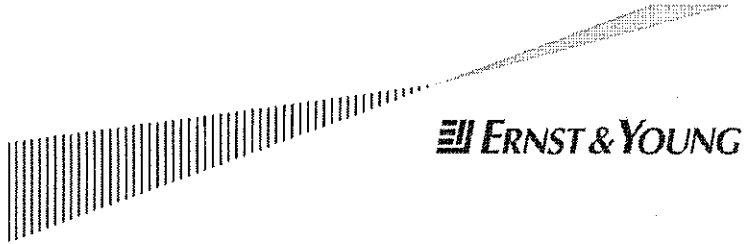
Aberdeen Waste Project VFM

Business Case update

7 August 2015

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Ernst & Young LLP
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London SE1 2AF
Tel: 020 7951 2000
Fax: 020 7951 1345
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Aberdeen City Council
Attention: Craig Innes
Woodhill House
Westburn Road
Aberdeen
AB16 5GB

Dear Craig

Waste Project VFM Model Update

In accordance with our engagement letter dated 17 July 2015, we ("Ernst & Young LLP" or "EY") enclose the results from the work performed on the VFM Model Update for the Waste Project ("the Project") for Aberdeen City Council ("the Council" or "ACC").

Purpose of our presentation and restrictions on its use

This report was prepared on your instructions solely to assist the Council in updating the VFM within the business case. Because others may seek to use it for different purposes, this report should not be quoted, referred to or shown to any other parties unless so required by court order or a regulatory authority, without our prior consent in writing. In carrying out our work and preparing our report, we have worked solely on the instructions of the Council.

Our report may not have considered issues relevant to any third parties. Any use such third parties may choose to make of our report is entirely at their own risk and we shall have no responsibility whatsoever in relation to any such use. This report should not be provided to any third parties without our prior approval and without them recognising in writing that we assume no responsibility or liability whatsoever to them in respect of the contents of our deliverables.

7 August 2015

Direct line: 0131 777 2130
[Redacted]

We only accept responsibility or liability to our client in respect of this report on the basis set out in the engagement letter. We accept no responsibility or liability to any other person in respect of this report, and accordingly if such other persons choose to rely upon any of its contents they do so at their own risk.

Scope of our work

Our work in connection with this assignment is of a different nature to that of an audit. Our report to you is based on our review of the information provided by you in relation to the Project and the Council. We have not sought to verify the accuracy of the data or the information and explanations provided by management.

Yours faithfully,
[Redacted]

Neil Thomson
Executive Director



Introduction & Background

- ▶ EY has been engaged by Aberdeen City Council (ACC) to perform an update to the Energy from Waste Business Case to assess the following 3 options:
 - ▶ Option 1 - EfW sized for Aberdeen City Council only
 - ▶ Option 3 - A joint Authority EfW for Aberdeen City Council, Aberdeenshire Council and Moray Council
 - ▶ Option 5 - The continued use of RDF export for Aberdeen City Council through use of the Altens RDF Facility post SITA contact
- ▶ In addition, the following sensitivities were performed for each option noted:
 - ▶ Capex -10% and +30%
 - ▶ Opex -10% and +10%
 - ▶ RDF offtake +50%
- ▶ AMEC have provided the technical information to allow EY to model the outputs contained within this pack.

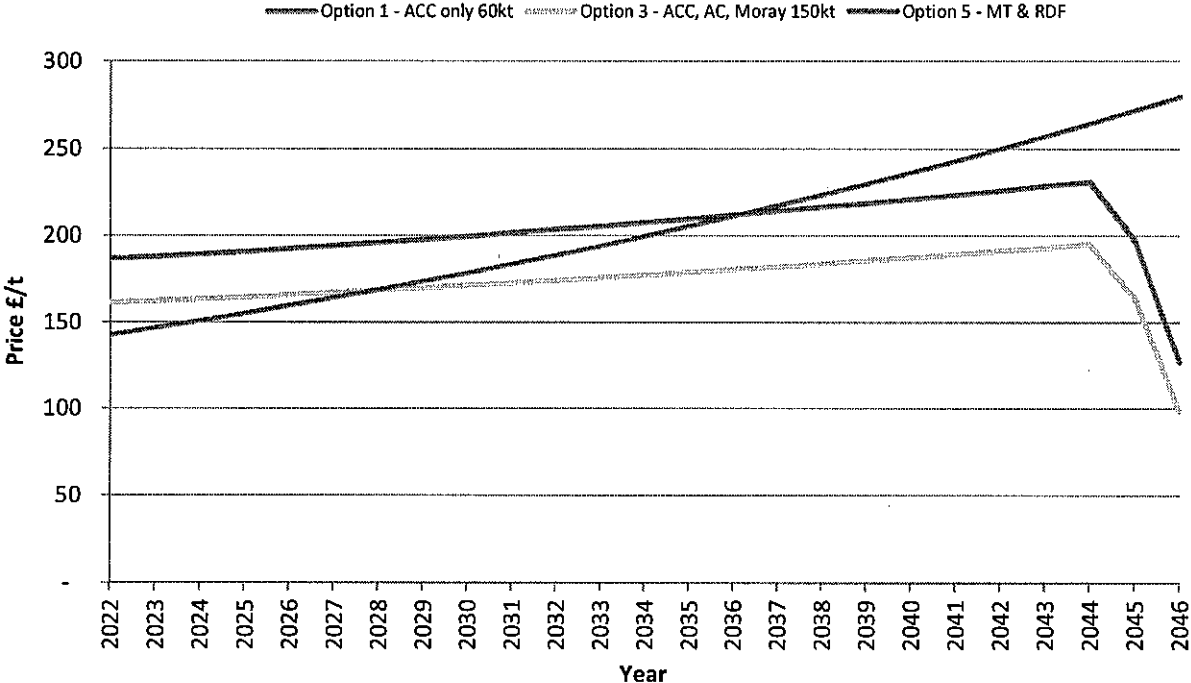
Results – Base Case

	Option 1 – 60kt EfW	Option 3 – 150kt EfW	Option 5 – MT & RDF
	£000	£000	£000
Total Nominal Price	290,710	247,967	283,880
Total NPV	98,818	84,793	87,411
	£	£	£
Gate fee/tonne Year 1 operations	187	161	143

- ▶ The results have been normalised for the Total Nominal Price and Total NPV using ACC tonnage to allow the comparability of each option.
- ▶ The results of the base case options show that Option 3 (150kt EfW) delivers the lowest NPV cost to the ACC and therefore shows best value for money.
- ▶ We note that Option 5 carries the most long term risk as the RDF gate fee will be set by the market over the life of the contract. Option 1 and 3 will allow a stable gate fee price over the length of the contract following the construction phase.

Base Case – Gate fees

- ▶ The graph below shows the gate fee for the three base case options over the contract length.
- ▶ There is drop off in gate fee for Options 1 & 3 in the later years due to the pay back of debt.
- ▶ Option 5 increased at a steeper rate due to all the costs being subject to indexation, whereas Options 1 & 3 have funding elements which are not subject to indexation.



Sensitivities – Option 1 60kt EfW

Option 1 – 60kt EfW			
Capex Sensitivity	-10%	Base	+30%
	£000	£000	£000
Capex Amount	53,036	58,929	76,608
Total Nominal Price	273,838	290,710	341,327
Total NPV	92,746	98,818	117,032
	£	£	£
Gate fee/tonne Year 1 operations	174	187	223

- ▶ These sensitivities show the impact on the Option 1 base case by adjusting Capex by -10% / +30% per the scope.

Sensitivities – Option 1 60kt EfW

Option 1 – 60kt EfW			
Opex	-10%	Base	+10%
	£000	£000	£000
Opex Amount	52,746	58,606	64,467
Total Nominal Price	280,715	290,710	300,705
Total NPV	95,707	98,818	101,928
	£	£	£
Gate fee/tonne Year 1 operations	181	187	192

- These sensitivities show the impact on the Option 1 base case by adjusting Opex by -10% / +10% per the scope.

Sensitivities – Option 3 150kt EfW

Option 3 – 150kt EfW			
Capex	-10%	Base	+30%
	£000	£000	£000
Capex Amount	127,856	142,062	184,681
Total Nominal Price	232,422	247,967	294,602
Total NPV	79,202	84,793	101,566
	£	£	£
Gate fee/tonne Year 1 operations	150	161	194

- These sensitivities show the impact on the Option 3 base case by adjusting Capex by -10% / +30% per the scope.

Sensitivities – Option 3 150kt EfW

Option 3 – 150kt EfW			
Opex	-10%	Base	+10%
	£000	£000	£000
Opex Amount	96,005	106,672	117,339
Total Nominal Price	241,012	247,967	254,923
Total NPV	82,629	84,793	86,957
	£	£	£
Gate fee/tonne Year 1 operations	157	161	165

- ▶ These sensitivities show the impact on the Option 3 base case by adjusting Opex by -10% / +10% per the scope.

Sensitivities – Option 5 MT & RDF

Option 5 – MT&RDF		
RDF Offtake	Base	+50%
	£000	£000
Offtake Price	£92	£138
Total Nominal Price	283,880	384,448
Total NPV	87,411	118,243
	£	£
Gate fee/tonne Year 1 operations	143	192

- ▶ These sensitivities show the impact on the Option 5 base case by adjusting the RDF offtake price by +50% per the scope.

Assumptions

Assumption	Value	Comments
Base date	2015	EY
Operational length	25 years	AMEC
No tax modelled	0	EY
Discount Factor	3.50% Real 6.087% Nominal	EY
<u>Funding Cost:</u> PWLB	5.00%	Verified by ACC.
<u>Indexation:</u> RPI Power Indexation Third Party Waste Capex RDF Landfill Gatefee Landfill Tax	2.50% 2.50% 2.50% 4.5% 3.00% 2.50% 2.50%	Per last Business Case Note: RDF indexation rate increased from 2.50% to 3.00% due to the anticipated increase in price based on the current low Euro rate and the availability in the current market driving the gate fee down.
50kt - Capex Insurance	£800,000	Per last Business Case
100kt - Capex Insurance	£1,400,000	Per last Business Case
50kt - Operational Insurance	£400,000 p.a	Per last Business Case
100kt - Operational Insurance	£800,000 p.a	Per last Business Case
MT - Operational Insurance	£53,500 p.a	AMEC
Power Generation Value	£47/tonne	AMEC - note that a more prudent approach may be taken if bank funded solution.
Third Party Waste price	£65/ tonne	EY
Landfill Gate fee	£41.40	AMEC

Assumptions (continued)

Assumption	Value	Comments
Landfill tax	£82.60	AMEC
RDF Offtake Price	£92/tonne	AMEC
Risk Adjustments: Capex Risk Opex Risk Power revenue risk TPWRisk	25.00% 5.00% -20.00% -20.00%	Per last Business Case (verified by ACC)

EY | Assurance | Tax | Transactions | Advisory

Ernst & Young LLP

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Appendix 4. High Level Project Plan

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High Level Programme

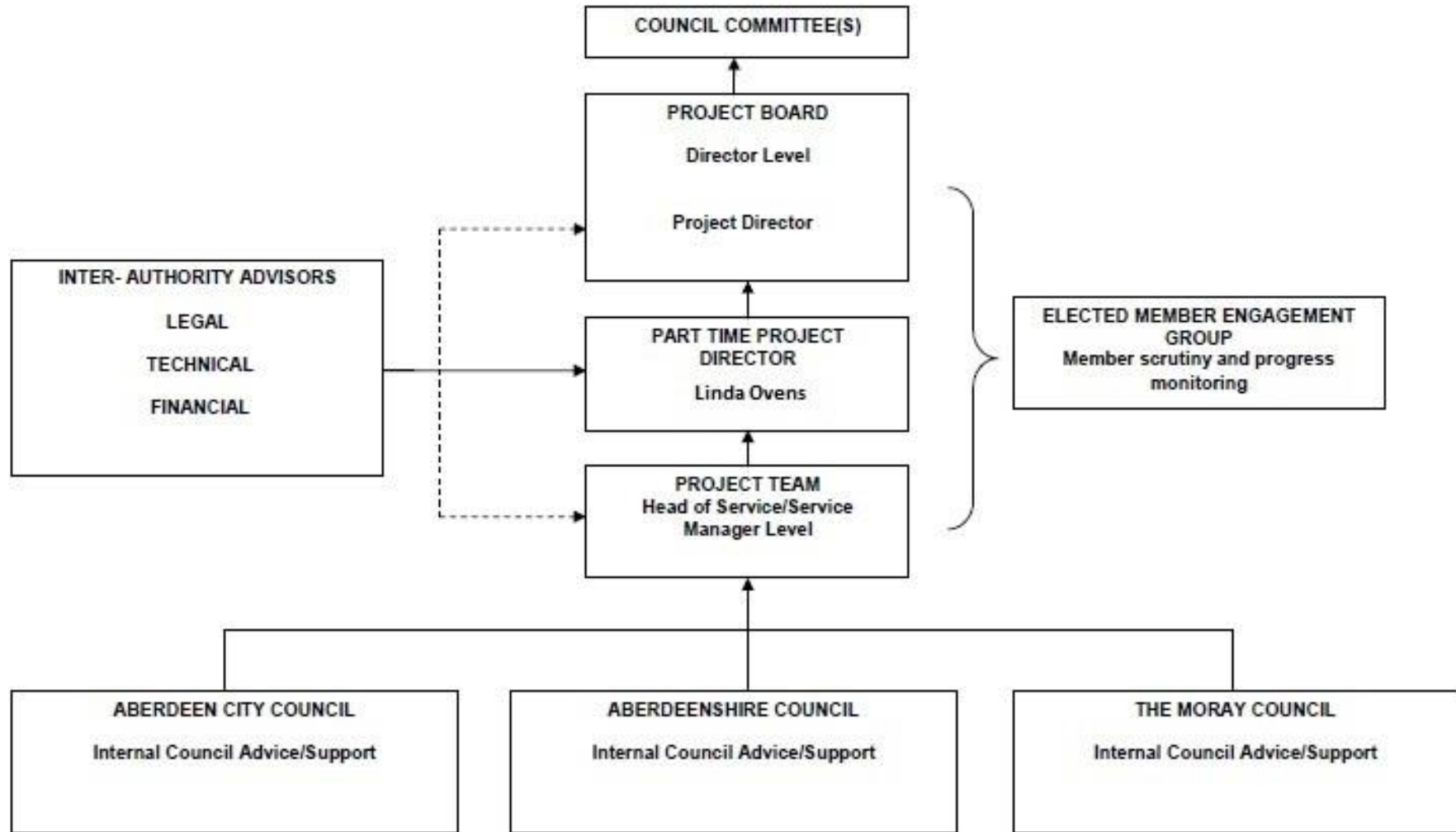
Activity	Timescale
Lodging of Notice to OJEU	January 2017
ESPD Return Date	March 2017
Completion of ESPD Shortlisting	March 2017
Invitation to Participate in Dialogue issued to up to 4 Bidders	April 2017
Initial Dialogue Phase (6 Sessions each)	May – October 2017
Detailed Solutions Submission Date	November 2017
Down-selection to 2-3 bidders	End December 2017
Final Dialogue Phase (2-3 sessions each)	January/February 2018
Invitation to Submit Final Tenders	March 2018
Final Tenders Submission Date	March/April 2018
Final Tender Clarification and Evaluation	April/May 2018
Preferred Bidder Appointment	June 2018
IAA3/Financial Close/Contract Award	August 2018
Target Service Commencement	August 2021

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Appendix 5. Governance Arrangements Stage 2

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GOVERNANCE ARRANGEMENTS - STAGE 2



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Appendix 6. Project Risk Register

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Joint Energy from Waste Project: Outline Risk Register v6 **Oct 2016**

No.	Risk Description <i>Threat to achievement of business objective</i>	Potential Consequences of Risk	Risk Control Measures	Risk Assessment (likelihood x impact) = risk			Mitigating action	Controls effective ?	Revised Risk Assessment (after controls)		
				Likely (1-6)	Cons (1-4)	= risk			Likely (1-6)	Cons (1-4)	= risk

Current risks are identified in this report with **white** background, Greyed-out risks are resolved, or are no longer current

General

	Requirement for pre-sort residual waste	Increased costs			3	3	9	Seek derogation from SEPA to reduce likelihood of requiring pre-sort	Partial	2	2	4
	Partners cannot reach agreement on time	Project delayed, or abandoned			2	4	8	Joint approach benefits demonstrated by option appraisals. Strong justification for compromise / agreement	Yes	2	2	4
	Council not willing to enter into long-term partnership deal	Project delayed, abandoned or Council withdraws from joint project			2	4	8	Joint approach benefits demonstrated by option appraisals. Strong justification for compromise / agreement	Yes	2	2	4
	Terms of agreement not in best interests of Council	Council disadvantaged operationally / financially			2	4	8	Ensure Inter-authority offers equitable protection / benefit to all partners	Yes	2	2	4
	Cannot deliver EfW residual waste solution in time to address 2021 regulatory requirements	Potential censure / fines if solution not delivered on time (or credible solution not well advanced by 2021)			3	4	12	Effective contribution to joint project to ensure timely delivery. Each Council to develop a "Plan B"	Yes	2	4	8
	Implications of BREXIT	Potential for time delay while implications of BREXIT are included within Contract			3	4	12	Keep informed of implications as they become known primarily via legal advisers	Yes	3	4	12

Site Risk

	No suitable site in local plan	Planning permission much more difficult			6	3	18	ACC site in local plan	Yes	0	0	0
	No suitable site in Council ownership	Site must be acquired - may be difficult			6	3	18	ACC acquiring site	Yes	0	0	0
	Site may not be identified suitable for CHP	Site must be near potential Heat customers for credible heat plan			5	3	15	ACC site is excellent for CHP and part of ACC long-term plan / policy	Yes	0	0	0
	Delay in acquiring site	May not develop plant in time to meet 2021 regulatory requirements			5	4	20	Site expected to be acquired by mid 2016	Yes	3	4	12
	Long transport times to site, and/or requirement for revised transfer station location(s)	Increased costs (transports, transfer station(s))			5	3	15	AWPR & Coast Road upgrade will reduce travel times / costs	Yes	4	2	8

Planning Risk

	No site in local plan	More difficult for planners to support application			6	2	12	ACC site in local plan	Yes	0	0	0
	No cross-party buy-in for local plan	Application may be opposed			5	3	15	Strong communication required ahead of decision	Yes	4	2	8
	Proposed site deemed unsuitable	Permission refused			4	3	12	Proposed site already approved - in local plan	Yes	0	0	0
	Larger plant to accommodate 3-Council requirements opposed by members / public	More difficult to acquire permission, or permission may be refused			4	3	12	Build effective political, public, business and media support for joint project	Partial	2	3	6
	Planning permission refused over lack of commitment to District Heating network	Project delayed, or abandoned			3	4	12	Commitment to developing DH network required from ACC	Partial	2	4	8
	Planning appealed - overturned by court / SG	Project delayed, or abandoned			3	4	12	Build effective political, public, business and media support for joint project. Ensure application is thorough and meets application requirements	Yes	2	4	8

Technology Risk

	Choice of technology is not proven	Plant may not work			4	3	12	ACC proposal is for proven incineration technology	Yes	3	3	9
	Choice of technology does not comply with regulatory requirements	Plant not permitted by SEPA			4	3	12	Proposals already discussed with SEPA in principle	Yes	3	3	9
	Choice of technology does not perform	Plant may be ineffective / expensive / breach regulations			4	3	12	ACC proposal is for proven incineration technology capable of operating over a wide CV range	Yes	3	3	9

Political Risk

	No buy-in from members	Project is not supported / opposed at Planning, or during financing stages			5	3	15	Extensive member engagement and reporting, Establishment of Joint Members' Working Group to support the project	Yes	0	0	0
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Financial Risk

	Local plant too expensive to build	Best value cannot be demonstrated			4	3	12	Economies of scale demonstrated by AMEC / E&Y cost model undertaken by ACC, and similar work for AC by SLR	Yes	2	3	6
	Local plant too expensive to operate	Best value cannot be demonstrated			4	3	12	Economies of scale demonstrated by AMEC / E&Y cost model undertaken by ACC, and similar work for AC by SLR	Yes	2	3	6

Joint Energy from Waste Project: Outline Risk Register

v6 Oct 2016

No.	Risk Description <i>Threat to achievement of business objective</i>	Potential Consequences of Risk	Risk Control Measures	Risk Assessment (likelihood x impact) = risk			Mitigating action	Controls effective ?	Revised Risk Assessment (after controls)		
				Likely (1-6)	Cons (1-4)	= risk			Likely (1-6)	Cons (1-4)	= risk

Current risks are identified in this report with **white** background, Greyed-out risks are resolved, or are no longer current

	Proposals to self-fund project cannot be delivered by all partners at contract sign-off	New financing options required			2	3	6	Refinance the project	Yes	2	2	4
--	---	--------------------------------	--	--	---	---	---	-----------------------	-----	---	---	---

Partnership Risk

	One or more Councils cannot Agree Stage 1 IAA	Partnership fails, or must be modified			1	4	4	Establish common areas of agreement	Yes	0	0	0
	One or more Councils cannot Agree Stage 2 IAA	Partnership fails, or must be modified			2	4	8	Establish common areas of agreement	Yes	1	4	4
	One or more Councils do not agree to sign-off contract proposal	Partnership fails, or must be modified			3	4	12	Establish common areas of agreement	Yes	1	4	4

Regulatory Risk

	Cannot demonstrate "heat plan"	Permit refused			5	3	15	Separate "heat plan" proposed & integral to ACC fuel poverty strategy	Yes	0	0	0
	More onerous future recycling requirements	Plant not economic / no longer performs (low CV)			4	3	12	Wide-CV technology proposed	Yes	3	3	9
	Future waste minimisation reduces tonnage	Plant sub-optimal, or no longer viable			4	3	12	Include wide range of operating scenarios in design specification	Partial	3	3	9

Commercial Risk

	Plant too small to attract interest of key market players	Limited competition. Higher prices / less choice of solutions / less experienced suppliers			3	3	9	Joint approach for regional facility will make project more attractive to market	Yes	0	0	0
New	Delivery model / contract does not attract market / incentivise operator	High cost / poor / no tender response			3	4	12	Optimise design of contract following soft-market testing	Partial	2	4	8
New	Option in contract for Councils to take O&M in-house does not attract market / incentivise operator	High cost / poor / no tender response			3	4	12	Optimise design of contract following soft-market testing	Partial	2	4	8
	Introduction of an Incineration tax (?)	Increased costs			2	2	4	Exemption for established plants ?	Partial	2	2	4

Operational Risk

	Plant failure	Accumulation of waste with no disposal option			2	4	8	Technical design to include buffer capacity; Reciprocal arrangements with other plants; Risk transfer to operator. Use ACC's RDF facility (if still available) for short-term mitigation	Partial	2	2	4
	Plant breakdown	Accumulation of waste with no disposal option			3	3	9	Technical design to include buffer capacity; Reciprocal arrangements with other plants; Risk transfer to operator. Use ACC's RDF facility (if still available) for short-term mitigation	Partial	3	2	6
	Disruption of residual waste supply (e.g. industrial relations dispute - collections)	Reduced supply impacting on performance; In extreme case plant shutdown may be required			1	4	4	Technical design to include buffer capacity to smooth feedstock supply interruptions	Partial	1	2	2

Exempt information as described in paragraph(s) 6, 9 of Schedule 7A of the Local Government (Scotland) Act 1973.

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