

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Capital Programme Committee
<b>DATE</b>	15 September 2022
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Ness Energy Project
<b>REPORT NUMBER</b>	RES/22/195
<b>DIRECTOR</b>	Steve Whyte
<b>CHIEF OFFICER</b>	John Wilson
<b>REPORT AUTHOR</b>	Pete Lawrence
<b>TERMS OF REFERENCE</b>	1.1

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### 1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to update the Committee on progress made with regards to the construction of the Ness Energy Project. This requirement was a recommendation approved at Full Council on the 4 March 2019.

### 2. RECOMMENDATION(S)

That the Committee:

- 2.1 Notes the progress achieved to date; and  
2.2 Notes the financial position for the project.

### 3. CURRENT SITUATION

#### BACKGROUND

- 3.1 On 4 March 2019, the Council approved the award of the Ness Energy Project Residual Waste Treatment contract for the implementation of the Project to EFW Ness Limited, a wholly owned subsidiary of Acciona Industrial UK limited and an Inter-Authority Agreement, IAA3. Similar approvals were given by Moray Council and Aberdeenshire Council on 4 March 2019 and 7 March 2019 respectively.
- 3.2 The contract was signed on 8 August 2019. An update on progress with the project was provided to committee in February 2022.

#### Update Since February 2022

#### COVID-19

- 3.3 Since the February 2022 committee meeting, the Contractor has maintained operations at the site by following COVID-19 related working practices in line with government and other relevant guidance. There has been minor

construction workforce impact arising from a number of positive COVID-19 tests in the teams of both the main contractor and its subcontractors. The Contractor has reported adverse impacts on the overall delivery of the project arising either, in their view, directly from Covid-19 restrictions on staff movements/working arrangements or impacts on the supply chain, with delays in delivery of materials to the site and the ability to recruit suitably trained staff hampering work programmes. The Contractor is seeking additional payments as a result of his perceived impacts that this has had on his overall programme, in terms of both time and monies. Refer to sections 4 and 5 below.

### **Engineering, Design and Procurement**

- 3.4 Engineering and design work is largely complete. The Contractor has had to procure the services of a number of new subcontractors to replace those that have either left the project or been unable to fully complete their scope of work.

### **Off-site Manufacturing/Supply**

- 3.5 All major facility components are on site or in the vicinity of the facility. The Contractor has reported some difficulties in the supply of general construction components/materials, however there is currently no evidence that this has significantly affected the project.

### **Site Works**

- 3.6 The Contractor is reporting that the large majority of construction works are complete and that cold commissioning of the plant is underway. Remaining areas of work include cladding and installation of the aluminium tile roof, insulation of boiler components, electrical works, electricity connection to the site, internal building fit out, external roads and landscaping and weighbridge installation. Images included at Appendix A show the current progress of the works.

### **Pollution Prevention and Control (PPC) Permit**

- 3.7 The PPC permit was issued on 3 May 2022. There are no unexpected conditions in the permit and the Contractor is working to comply with the pre-operational conditions.

### **Programme**

- 3.8 Current indications are that hot commissioning is anticipated to commence in winter 2022/23 with the facility fully operational in summer 2023. The date at which the Contractor is obliged to receive and manage the three councils' waste remains 29 October 2022. From this date forward, the Councils will deliver non-recyclable waste to agreed contingency delivery points and the Contractor will be responsible for its management from there on. Once hot commissioning starts at the NESS Energy facility, the Councils will begin to deliver waste to the site according to the needs of the commissioning programme. The construction and cold commissioning programmes have been impacted by a range of issues including steel structure delay and subcontractor issues noted in 3.4.

- 3.9 It should be noted that there is still a significant risk that external impacts may continue to affect the anticipated delivery timeline and budget. These are external impacts, such as, but not limited to:

- Impacts to the supply chain and on-site resource due to the sustained impact of COVID-19 and the emergence of new variants.
- Brexit
- A nationwide, built-up demand for construction materials which has been evident throughout the industry since early May 2021.
- Construction inflation
- Further financial risks from the Russian aggression in Ukraine resulting in supply chain volatility and rising inflation, to levels not seen for four decades.

### **Inter-Authority activity**

- 3.10 The Project Board continues to meet in accordance with the Inter-Authority Agreement. The three-authority Officer Working Group also meets monthly and is currently establishing arrangements for delivery of commissioning waste, haulage of waste from Aberdeenshire and Moray Councils and the handling of bulky waste that, untreated, is outwith the dimensions defined in the Waste Acceptance Criteria for the facility. Large suites, carpets and mattresses are the most common items that will require pre-treatment. The new membership for the Elected Member Engagement Group has now been established and it will meet in September 2022.

### **Community Liaison**

- 3.11 The contractor-managed Community Liaison Group which includes south of the River Dee Community Councils and elected representatives continues to meet virtually on a quarterly basis. The contractor updates the project website with construction related matters that have the potential to impact on neighbours and the wider community. The only complaints received since the last meeting relate to site related vehicles parking close to the site and adversely affecting local businesses. Since being notified of these concerns the contractor has liaised with the businesses concerned, has established increased off-road parking and is managing its subcontractors accordingly.

### **Community Benefits**

- 3.12 The contractor has made good progress in achieving Community Benefits commitments incorporated in the contract.

The following is a summary of the contractor's performance against its community benefits obligations in the contract year to August 2022.

<b>Specific Commitment</b>	<b>Target</b>	<b>Actual (Year 2)</b>
SVQ3 apprentices hired	1	1
Industry certification achieved	3	5
Achievement of level 2 qualification or above	1	TBC

Higher & Further Education Work placement	1	1
Volunteer Ambassador	1	1
Graduate recruitment (min of 28 weeks)	1	2
New entrants employed	2	4
Case Study	1	TBC
Timebank hours	8	19
Donations	£0	Over £55,000

#### 4. FINANCIAL IMPLICATIONS

- 4.1 Payments are being made to the contractor in line with Milestones set out in the contract. The Contractor has indicated to the Authority that it believes its costs for completing the construction works have increased as a result of Covid-19 beyond what was anticipated when the parties reached an agreement on Covid-19 impacts in 2020.
- 4.2 The Contractor has notified Council Officers that it will be seeking adjudications to consider several contractual matters related to the Contract. These matters will require to be considered in accordance with the contract between the parties and as such additional expenditure will be incurred in protecting the Councils' position. At this stage these costs can be accommodated within the approved project budget.
- 4.3 The table below shows the project budget share for the Aberdeen City Council.

<b>Gross Budget</b>	<b>Spend to date</b>
<b>£70.0m</b>	<b>£ 51.3m</b>

#### 5. LEGAL IMPLICATIONS

- 5.1 As noted above in paragraph 3.3, in late July 2022, the Contractor issued a first Notice of Adjudication relating to whether Covid-19 constitutes Force Majeure. If found in the Contractor's favour, relief and compensation may be due should it be demonstrated that the pandemic has impacted the overall programme, in terms of both time and monies.
- 5.2 Council Officers are contesting this interpretation.

5.3 As noted in 4.2, further Adjudications are anticipated in relation to other contractual matters arising from the Covid-19 pandemic.

## 6. ENVIRONMENTAL IMPLICATIONS

6.1 The development of the NESS Energy facility will result in a net reduction in carbon emissions arising from the management of non-recyclable waste.

6.2 The facility will generate approx. 12MW of low carbon electricity for export to the national grid and provide up to 10MW of heat into the Torry Heat Network being developed by Aberdeen City Council.

## 7. RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
<b>Strategic Risk</b>	Contractor termination	L	Extensive procurement work undertaken to select proven and financially stable contractor. Strong contractual controls in place
<b>Compliance</b>	Health and Safety breaches during construction	L	Strong contractual obligations to use best Health and Safety practice monitored on site daily by Authority Technical representative
<b>Operational</b>	Delay in Construction Programme	M	Consequences of delay managed through contract conditions. Effective communication with three authorities' waste teams to manage consequences should they arise
<b>Financial</b>	Project costs increase as a result of Contractor Claims	M	Contract conditions define claims management processes
<b>Reputational</b>	Construction delay and cost overspend	L	Contract obligations deemed sufficient to minimise risk to the Authority
<b>Environment / Climate</b>	Failure to operate facility within authorised emission levels	L	EfW is best available technology for management of mixed municipal waste. Established and proven process selected during procurement provides strong confidence that plant will operate well within acceptable standards. Low

			carbon heat and power from this facility will displace fossil fuel thereby reducing net carbon emissions
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## 8. OUTCOMES

<b><u>COUNCIL DELIVERY PLAN</u></b>	
	<b>Impact of Report</b>
<b>Aberdeen City Council Policy Statement</b>	<p>Unleashing the non-oil and gas economic potential of the city: The construction of the energy from waste facility will create over 200 jobs many using skills transferable from the oil and gas sector. Furthermore, during the 20 years of operation, highly skilled, engineering-based staff will be required, again utilising skills common in the oil and gas sector.</p> <p>Maximising community benefit from major developments: There are numerous community benefit obligations built into the contract including the establishment of apprenticeships, placements and training. Links are being established with schools in the region to support environmental education.</p>
<b>Aberdeen City Local Outcome Improvement Plan</b>	
Prosperous Economy Stretch Outcomes	<p>The proposals within this report support the delivery of LOIP Stretch Outcome 1 – 10% increase in employment across priority and volume growth sectors by 2026. The construction of the energy from waste facility will create over 200 jobs. Furthermore, during the 20 years of operation, highly skilled, engineering-based staff will be required.</p> <p>The Contractor has obtained Real Living Wage accreditation and this applies to all sub-contracts.</p>
Prosperous People Stretch Outcomes	<p>2.1 Promoting inclusive economic growth for our most disadvantaged communities. There are numerous community benefit obligations built into the contract including the establishment of apprenticeships, placements and training. Links are being established with schools in the region to support environmental education. The facility is being developed close to one of the disadvantaged areas of the city.</p>

Prosperous Place Stretch Outcomes	14.1 Reducing emissions across the city through delivery of Aberdeen’s Sustainable Energy Action Plan ‘Powering Aberdeen’. Construction of the Ness Energy EfW facility will significantly reduce carbon impact from the disposal of non-recyclable waste. The facility also provides the opportunity to develop low carbon heat supplies to local housing and businesses thereby offsetting fuel poverty.
<b>Regional and City Strategies</b>	Strategic Development Plan: Sustainable Development and Climate Change. This facility will increase the supply of renewable energy in the region and diversify the mix of renewable sources. The facility enables the objective to meet our waste management needs locally and promote the development of the Circular Economy. The facility is specifically identified at paragraph 6.18 as an objective of the Plan.
<b>UK and Scottish Legislative and Policy Programmes</b>	The Waste (Scotland) Regulations 2012 introduced a ban on the landfilling of biodegradable waste. This ban will now come into force in 2025. The facility enables the three authorities in the Northeast to comply with that regulation 3 years in advance.

## 9. IMPACT ASSESSMENTS

Assessment	Outcome
<b>Equality &amp; Human Rights Impact Assessment</b>	Full EHRIA not required. Evidence submitted to Equalities Team.
<b>Data Protection Impact Assessment</b>	Screening questions completed – not required

## 10. BACKGROUND PAPERS

Not applicable.

## 11. APPENDICES

Appendix A. Images of Construction Works

## 12. REPORT AUTHOR CONTACT DETAILS

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## Appendix A. Images of Construction Works

View from West of Facility: February 2022



View from Northwest of the Facility: August 2022





View from East of the Facility: August 2022

