

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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