

**AGENDA ITEM**

**REPORT TO CABINET**

**18 SEPTEMBER 2025**

**REPORT OF SENIOR  
MANAGEMENT TEAM**

**CABINET DECISION**

**Cabinet Member for Environment, Leisure and Culture - Lead Cabinet Member -  
Councillor Nigel Cooke**

**TEES VALLEY WASTE PROJECT - ENERGY REDUCTION FACILITY (ERF) UPDATE**

**SUMMARY**

The five Tees Valley Authorities, Durham County Council and Newcastle City Council (together "the Councils") have joined together to create an opportunity for a contractor to design, build, operate and finance a new Energy Recovery Facility (ERF) to be located in the Tees Valley.

A Special Purpose Vehicle (SPV) is to be created, which will be a limited company owned by all 7 councils, to enter into the contract with the preferred bidder, Viridor. The SPV will manage the contract throughout the design, build, operation and financing of the ERF.

Cabinet has previously made the principal decisions to progress the joint waste facility as detailed in paragraphs 1 to 3 below and now a number of additional, ancillary legal agreements are required to progress the scheme to financial completion, to implement the project and ensure it's ongoing good governance.

**REASONS FOR RECOMMENDATION(S)/DECISION(S)**

External solicitors, DLA Piper LLP, were appointed by the lead authority, Hartlepool Borough Council, to advise and represent the Councils and have been advising on the necessary documentation to implement the project and ensure the project meets all of our requirements.

**RECOMMENDATIONS**

1. To appoint the Assistant Director – Community Services and Transport, Craig Willows, as Stockton-on-Tees Borough Council's Director on the Board of the SPV and to authorise them, and any successors, to take all decisions as set out in the SPV agreements any approved Articles of Association, and associated documents for the good governance of the SPV and ERF.
2. To authorise the council subscribing for shares in the SPV
3. To endorse the Council being the Shareholder in the SPV and to appoint the Section 151 Officer as the Shareholder Representative and to authorise that shareholder representative to appoint an alternate representative to act as their substitute or deputy and authorise the Shareholder Representative and their alternate to make decisions under the Shareholder Agreement, articles of association etc including the making of shareholder resolutions on behalf of the Council.

4. To delegate authority to the Director of Community Services, Environment and Culture in consultation with the Director of Corporate Services and Cabinet Member for Environment, Leisure and Culture to enter into the following agreements on behalf of the Council
  - a. The Shareholder Agreement
  - b. The Second Inter Authority Agreement
  
5. To delegate authority to the Director of Community Services, Environment and Culture in consultation with the Director of Corporate Services and Cabinet Member for Environment, Leisure and Culture to authorise the LA SPV to enter into the following agreements
  - a. Shareholders Agreement
  - b. Service Level Agreement
  - c. Secondment Agreement
  - d. Council Guarantee of the Project Agreement
  - e. Novation of the Option Agreement
  - f. Side Deed with the estate owner
  - g. Environmental Deed
  - h. Lease Guarantee
  
6. To delegate authority to the Director of Community Services, Environment and Culture in consultation with the Director of Corporate Services, Chief Finance Officer and Cabinet Member for Environment, Leisure and Culture to enter into all other necessary agreements or legal documents on behalf of the Council or the SPV to enable the project to reach financial completion and monitor and manage the contract.

## **DETAIL**

1. In July 2020 Cabinet approved the First Inter Authority Agreement between the five Tees Valley Authorities, Durham County Council and Newcastle City Council to agree the governance arrangements between them in order to pursue a joint waste facility and approved the commencement of the procurement process to procure a contractor to design, build, operate and finance the ERF. The Cabinet Report of 16 July 2020 contains more details.
  
2. In March 2022 Cabinet approved the creation of the Special Purpose Vehicle (SPV) and delegated the authority for the entering into of the Shareholder's Agreement and the Waste Supply and Support Agreement between the Council's and the SPV, and delegated the authority for the SPV to award the contract, enter into the Project Agreement with the successful contractor and the lease for the land with STDC (Teesworks) on which the ERF would be built.
  
3. The March 2022 decision by Cabinet also delegated authority to officers to enter into two Guarantees, one to the SPV for the Project Agreement and the second to provide a guarantee that the SPV will meet its requirements under the lease. Cabinet further delegated authority to finalise and agree the Business Plan and sufficient resources to allow the SPV to reach financial close and to monitor and manage the contract on behalf of the Councils.
  
4. The Cabinet Report of 17 March 2022 contains more details.
  
5. The Council's have selected a Preferred Bidder for the contract, Viridor, so the project is now moving towards financial completion.
  
6. The documents in paragraphs 1 to 3 have been progressing and are almost ready to complete, however DLA Piper LLP, on behalf of the Council's, are producing the associated and ancillary suite of documents needed to ensure the governance of the contract and its future monitoring and management.

7. The Council is required to have a Director on the Board of the SPV to represent the interests of the council and would require the authority to make Board decisions without needing to return to Cabinet or the approval of a delegated officer before each decision can be made. This would effectively be the same authority that the Director of Environment, Leisure and Culture currently has to manage and monitor our current waste disposal contract.
8. Each of the 7 Councils will acquire one share each in the SPV which will entitle them to one vote each. It is proposed that the Council will be a Shareholder and therefore will require a Shareholder Representative to make decisions on behalf of the council in its role as shareholder in the company. SPV decisions will be made by the Management Team, appointed Board Director or Shareholder, the governance of which will be set out in the Shareholder's Agreement, Second Inter Authority Agreement and articles of association of the SPV.
9. In parallel with financial close being reached the First Inter Authority Agreement will end. The Waste Supply and Support Agreement and Shareholder Agreement will govern the management and monitoring of the contract.
10. Redcar and Cleveland Borough Council will be providing support services, such as Finance, HR, Legal and IT services, amongst others, to the SPV therefore a Service Level Agreement between Redcar and Cleveland Borough Council and the SPV is proposed, along with a secondment agreement to second officers from Redcar and Cleveland Borough Council to the SPV.
11. Whilst Cabinet have approved the Council providing a Guarantee to the SPV with regard to the Project Agreement the SPV will also need to provide a similar guarantee to the contractor that the SPV will comply with its obligations under the Project Agreement.
12. Hartlepool Borough Council entered into an Option to lease the land from STDC (Teesworks) for the land on which the ERF will be built. Once the SPV has been formed and financial close reached Hartlepool will novate (transfer) the option agreement to the SPV.
13. A side deed between the SPV and South Tees Development Ltd, Teesworks and South Tees Development Corporation will set out how wider site issues for the remainder of the STDC estate will be dealt with, for example, abnormal loads, fly tipping and service charges.
14. The environmental deed, which will form part of the Lease of the site, will deal specifically with contamination and how it will be dealt with, by whom etc, should any contamination be identified.
15. Whilst Cabinet have approved the Council providing a Guarantee to the SPV with regard to the Lease from STDC, the SPV will also need to provide a similar guarantee to the contractor that the SPV will comply with its obligations under the sub-lease from the SPV to the contractor.

## **COMMUNITY IMPACT IMPLICATIONS**

16. All residents and businesses will benefit from a deliverable waste disposal strategy. The future ERF will deliver social value and investment into the local economy, employment and training opportunities and regeneration.

## **CORPORATE PARENTING IMPLICATIONS**

17. There are no corporate parenting implications

## **FINANCIAL IMPLICATIONS**

18. This project will have capital and revenue implications for the authority as outlined in the Outline Business Case (OBC) report (approved Nov 2019 by Cabinet).
19. The financial implications of the LA SPV will be set out within the Business Plan. The treatment costs of the residual waste that shall be required to be paid to the Contractor and how these will be shared between the seven Councils will be defined within the Waste Supply and Support Agreement. The costs of the lease and the LA SPV will be allocated between the Councils in accordance with the Waste Supply and Support Agreement.

## **LEGAL IMPLICATIONS**

20. The recommendations ensure that the Council is exercising all due diligence and protecting the Council's position in the Project. Legal advice has been received from DLA Piper LLP on behalf of all 7 councils that the agreements are necessary or advised.

## **RISK ASSESSMENT**

21. The five Tees Valley Local Authorities along with Durham County Council and Newcastle City Council have agreed and implemented a robust risk management strategy to identify the key risk and ensure a consistent approach to both strategic and operation risk across the project.

## **WARDS AFFECTED AND CONSULTATION WITH WARD/COUNCILLORS**

All wards will be affected by the provision of a new waste facility for the Borough

## **BACKGROUND PAPERS**

Cabinet Report dated 16 July 2020

Cabinet Report dated 17 March 2022

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