

DECISION TITLE: Regularisation of Governance for ERF Electricity Offtake Arrangements

Councillor Nigel Simons, Cabinet Member for Waste, Street Scene and the Environment

November 2022

Deadline date: N/A

Cabinet portfolio holder:	Councillor Nigel Simons, Cabinet Member for Waste, Street Scene and the Environment
Responsible Director:	Adrian Chapman, Executive Director: Place and Economy
Is this a Key Decision?	No
Is this decision eligible for call-in?	Yes
Does this Public report have any annex that contains exempt information?	No
Is this a project and if so has it been registered on Verto?	No Verto number: N/A

RECOMMENDATIONS

The Cabinet Member is recommended to:

1. Authorise the Executive Director, Place and Economy in consultation with the Director of Resources to undertake functions previously delegated to Corporate Director Resources in consultation with Director of Governance via previous decision SEPT15/CMDN/79

1.	PURPOSE OF THIS REPORT
1.1	This report is to enable Executive Director, Place and Economy to exercise the delegated authority previously delegated to and exercised by Corporate Director, Resources, following changes in corporate management responsibilities.
1.2	This report is for the Cabinet Member for Waste, Street Scene and Environment to consider exercising delegated authority under paragraph 3.4.3 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (f)

2.	TIMESCALES			
	Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
3.	BACKGROUND AND KEY ISSUES			
3.1	<p>The Energy Recovery Facility (ERF) is managed under a Design Build Operate Maintain (DBOM) contract held by Viridor Peterborough Limited, which has provision for full operation maintenance and repair for the contract period to 2045.</p> <p>The council chose to accept the pricing risk from the sale of the electricity whilst Viridor Peterborough Limited held the risk for generating a specific volume of electricity per year.</p> <p>A provision is made within the contract to guarantee a specific volume of electricity to be made each year, with a mechanism to provide some financial protection to the council if the volume guarantee is not fulfilled.</p> <p>The council presently has separate arrangements in place for the sale of electricity generated by the facility and contained within these arrangements are different options for the method of sale.</p> <p>These provisions allow for the council to sell a proportion of the electricity generated by the facility at a pre agreed price for a defined period, this is known as a hedging arrangement which brings certainty of price for a given time period.</p> <p>Governance arrangements put into place in 2015 under Key Decision KEY/10JUL15/01 require refreshing to better reflect the changed management structure and to maintain a flexible and responsive decision-making process. This report therefore sets out the necessary decisions, some from the original governance, to ensure a complete structure for future decisions.</p>			
4.	CONSULTATION			
4.1	Consultation has been undertaken with the governance team to ensure the appropriate governance is in place following the development of the council's management structure.			
5.	ANTICIPATED OUTCOMES OR IMPACT			
5.1	<p>The outcome of this report is that the governance arrangements will be fit for the future following changes to the council's management structure.</p> <p>Decisions taken under these delegated powers will of course be recorded, and where required, published in accordance with the constitution.</p>			
6.	REASON FOR THE RECOMMENDATION			
6.1	<p>While the council structured the contract with Viridor Peterborough Ltd to allow itself flexibility in the way in which it manages the electricity and/or heat produced by the ERF, the recommendations contained within this report aim to enable the council to increase that flexibility to derive maximum potential benefit.</p> <p>Furthermore, in order to generate the maximum benefit, the council has identified the possibility of an additional source of waste by means of a delegation from one or more</p>			

	<p>Waste Disposal Authorities (WDA) which would allow the ERF to operate closer to its maximum capacity and increase the financial benefit which the council could derive from the ERF's activities.</p> <p>The electricity supply market is subject to continual change and for the council to continue to ensure it delivers best value in respect of income received from electricity produced by the activities of the ERF it needs to develop a flexible offtake strategy. It may not be able to do this effectively through a long-term deal so needs to develop a methodology to monitor the value to be achieved from electricity and/or heat in the longer term.</p> <p>The Executive Director, Place and Economy requires the ability to respond quickly to energy market developments as part of their role.</p>
7.	ALTERNATIVE OPTIONS CONSIDERED
7.1	<p>Do Nothing.</p> <p>This is not an option as the council is obligated to make arrangements for the offtake of electricity and/or heat from the ERF facility in order to both comply with the contract it holds with Viridor Peterborough Ltd and to ensure realisation of the energy's value in the interests of its residents. Also, the uncontrolled delivery of electricity to the transmission grid is not compliant with the Electricity Act 1989 where all supplies must be registered and regulated to ensure efficient and stable electricity supplies.</p>
8.	IMPLICATIONS
	Financial Implications
8.1	<p>The income achieved from the sale of the energy produced by the facility is built into the overall cost model included in the Medium-Term Financial Strategy (MTFS), which includes the costs of constructing and operating the plant, income from energy, and savings in the cost of alternative waste treatment (landfill). The proposed arrangement seeks to ensure that the income element is maximised in line with the MTFS, and this income will contribute towards the energy income targets within the existing MTFS. The actual income received for the power will depend on the prevailing rate at the time of generation and offtake.</p>
8.12	<p>Although the sale of the electricity will generate a considerable income for the Council no profit is made as the income is used to offset both the operational and finance cost of the project as a whole. This income was included in the original financial modelling for the construction and operation of the ERF.</p>
	Legal Implications
8.2	<p>The Council considered the various legislative powers available to it to sell electricity under these offtake arrangements and has the power to sell the electricity under Section 11(1) (d) of the Local Government (Miscellaneous Provisions) Act 1976. The Council is not under an obligation to set up a company to sell the electricity under this power, although it may choose to do so. These arrangements were not set up with the intention of making a profit from the offtake arrangements.</p> <p>The Council also considered its powers to accept waste from other waste disposal authorities for treatment at the ERF. The Council can use its statutory powers (rather than contracts) to enter delegation arrangements with another waste disposal authority, namely under Section 9EA of the Local Government Act 2000 and Regulation 5 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 to</p>

	<p>discharge the waste disposal functions of other waste disposal authorities. On delegation, the function for the waste disposal will pass to the Council, although the responsibility for the discharge of the function will remain with the authority delegating the function.</p> <p>There is currently no statutory guidance specifically relating to waste disposal authorities exercising their statutory powers to delegate all or some of their waste disposal functions. However, this delegation is not uncommon in practice.</p>
	Equalities Implications
8.3	It is not anticipated that any one identified group will be disproportionately affected by this proposal.
	Carbon Impact Assessment
8.4	The decisions taken here will have no impact on the positive climate benefits the ERF continues to offer the city from a waste management perspective and will maintain the necessary governance for offtake arrangements to maximise the benefit obtained from the facility.
9.	DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED
9.1	None.
10.	BACKGROUND DOCUMENTS Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
10.1	SEPT15/CMDN/79
11.	APPENDICES
11.1	<i>There are none</i>