

<b>SUBJECT:</b>	Project Gwyrdd Update
<b>DIRECTORATE:</b>	Waste & Street Services
<b>MEETING:</b>	Strong Communities Select Committee
<b>DATE:</b>	10 <sup>th</sup> November 2016
<b>DIVISION/WARDS AFFECTED:</b>	All

## **PURPOSE:**

1. For Members to receive an update on the implementation of the Prosiect Gwyrdd Energy from Waste Contract.

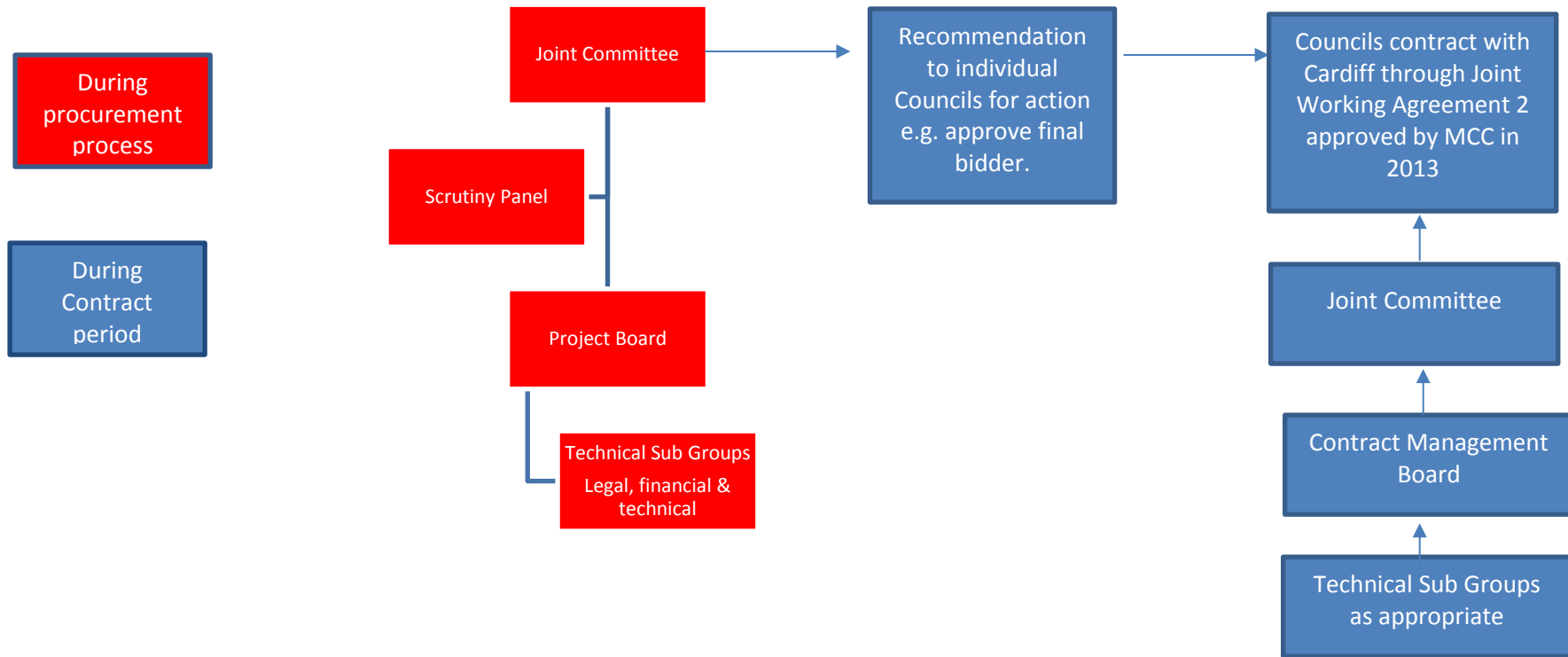
## **BACKGROUND**

2. Members will recall that MCC is and will remain a partner of Prosiect Gwyrdd (PG) until 2048. Between 2007-13 the SE Wales LAs of MCC, Caerphilly, Cardiff, Newport and Vale of Glamorgan worked together and with Welsh Government to structure a procurement to replace landfill as the main form of disposal for residual waste. The need to replace landfill was driven by:
  - Landfill Directive (1999) requirements which placed a statutory limit on the amount of biodegradable municipal waste (BMW) that Councils could send to landfill
  - Landfill tax escalator and the increasing costs of landfill
  - Landfill being the least environmentally sustainable method to dispose of waste
  - Increasing recycling performance and the need to have complimentary infrastructure in place for waste that cannot be recycled
  - Lack of landfill provision across the UK
3. Following a robust and well-structured procurement, in December 2013 Viridor were awarded the contract from Cardiff as the Lead Authority. The Partnership which is formalised by a Contract between the LAs to allow Cardiff to contract with Viridor is called Prosiect Gwyrdd and is governed by a Joint Working Agreement 2.
4. Through the procurement process a scrutiny panel was established made up of Councillors from the relevant Scrutiny Committees. MCC's representatives were Cllr. S. Howarth and Cllr. V. Smith. The purpose of the panel was to:

- Scrutinise the procurement process for robustness, clarity and programme management (e.g. meeting timescales)
  - Ensure the process took account of a wide range of views. One of the biggest successes of the panel was their Call for Evidence which engaged a wide range of stakeholders and interested parties and produced a final report which gave clear recommendations to the Prosiect Gwyrdd Joint Committee to help inform the final Contract
  - Provide local input and a link to internal Council scrutiny processes
5. The use of a scrutiny panel through a partnership procurement was held up as best practice and added significant value to the partnership.

### **The Procurement Process & The Contract**

6. For Member's ease of reference the Council report of February 2013 approving the Final Business Case is at Appendix 1. PG procured a long term, modern, sustainable alternative to landfill for waste disposal. The final outcome was a R1 Energy from Waste Facility which due to its efficiency is classified as a "recovery" not a "disposal" plant. The 350,000 tonne facility was built by Viridor at Trident Park, Ocean Way, Cardiff.
7. The procurement method was Competitive Dialogue with Cardiff as the Lead Authority with a robust governance process illustrated below:



8. At each critical stage individual Councils approved the process:- Outline Business Case, Final Business Case and approval of Final Bidder. Each of these stages were also approved by Welsh Government as Ministers agreed to fund 25% of the gate fee through an annuity mechanism for the lifetime of the project.
9. In 2014 with the early completion of the facility by Viridor, the Councils agreed to an Interim Contract via Cardiff as the lead for an early move away from landfill and prior to the PG contract commencing (commissioning of the official contract began 1<sup>st</sup> August 2015, with the full contract coming into place on 1<sup>st</sup> April 2016). The Interim Contract was approved by Cabinet in October 2014 following a review at Select Committee.

### The Benefits to MCC

10. The report at Appendix 1 illustrates the proposed financial benefits of Prosiect Gwyrdd, however these could never be exact given the model was based on assumed waste tonnages. The Contract commits Councils to a Guaranteed Minimum Tonnage (GMT) which were based on best estimates of waste composition, demographic changes, housing development and changes

in packaging etc. This is a complex process and it is very difficult to predict waste arisings next year let alone in 2047. For MCC the minimum and maximum tonnages contained in the contract are:

Minimum tonnage	Mid Range	Maximum tonnage
13,134	16,752	21,403

11. MCC has seen a 9.6% increase in total waste arisings between 2013/14 and 2015/16. This is due to a variety of factors including (but not exclusively):- economic recovery, and commercial waste at HWRCs. However with the increase in recycling performance and the introduction of innovative practices such as the two bag residual restriction and “van ban” at HWRCs residual waste has decreased quite significantly. Between 2012/13 (on which the PG forecasts are based) and predicted 2016/17 residual waste to PG we are forecasting a 12% positive difference of 4,000 tonnes. The current predicted tonnage for MCC for 16/17 is 17,500 tonnes (compared to 20,045 tonnes in 2012/13) which leaves a 22% window for residual waste growth before the maximum tonnage is breached. However the “contract” only exceeds the maximum tonnage if the totality of the Contract waste exceeds the maximum tonnage, and with all the Councils at varying stages of their recycling journey and economic recovery waste growth and residual waste arisings have varied across the Partnership.
12. The Partnership closely monitors the tonnages as tonnage equal cost. The move to Energy from Waste (EfW) was forecast to bring significant financial benefit to the authority. Crudely if tonnages and cost had remained static from 2012/13 to 2015/16 and there was a straight switch to the PG Contract in April 2016 a cash saving of £950k would have been achieved. The PG tonnage model was also based on the premise of gradually reducing waste arisings and a stable increase in recycling performance. Therefore the “cash benefit” of PG wasn’t gate fee alone but reducing residual waste arisings. The latter benefit was achieved very quickly over 2013/14 with the two bag restriction policy and therefore MCC received the benefit of this aspect of the contract prior to the Contract initiating. Prices and tonnages have varied significantly over the intervening period and therefore whilst the saving has been achieved the benefits have been achieved gradually over this period and been used to mitigate other pressures within the service (e.g. fuel, recycling processing costs, increasing waste arisings, other contract costs etc) rather than as a straight cash saving reflected in the MTFP.
13. As well as a financial benefit PG will also give MCC 4-5% on its recycling rate each year of the Contract as the Incinerator Bottom Ash is to be recycled into aggregate and any metals extracted from the process are also sent for recycling. Therefore the target for MCC in 2016/17 is 66% recycling compared to the requirement by WG for us to achieve 58%. The next target is 64% in 2019/20.

14. A wider, longer term and sustainable benefit is the almost zero to landfill MCC is achieving. For 2016/17 data so far has indicated c.1% to landfill. This waste is from reprocessing of rejects (e.g. the waste out of the composting process or rejected material at the MRF) rather than an output of PG itself. The Viridor plant is classed as a R1 energy recovery plant and therefore is far better than landfill due to its environmental performance as specified in statutory Waste Hierarchy Guidance to which we must have regard.
15. The Contract also requires Viridor to manage a £50,000 Community Benefit Fund. MCC has publicised this fund on its website and informed local Community Groups and we would encourage any group who is eligible to apply for funding. There are two tranches of project funding award each year and the process is managed by Viridor, and chaired by the Chair of the Joint Committee with a range of stakeholders involved in the process. Further information on the scheme can be found here: <https://viridor.co.uk/our-operations/energy/energy-recovery-facilities/cardiff-erf/community/>. The facility also has a state of the art Education Centre which was developed in partnership with the Council's so closely compliments the offer by MCC at its One Planet Centre.

## **Governance**

16. The Contract is closely managed on a day to day basis by a Project Management Team employed by Cardiff on behalf of the Partnership. There are regular Contract Management Board meetings made up of Senior Officers from each Council (for MCC the representative is the Head of Waste & Street Services with the Recycling Strategy and Business Manager as deputy). The CMB meetings are not quorate unless all 5 Councils are represented. The CMB is then overseen by a Joint Committee made up of relevant Cabinet Members from each Council – for MCC it is the Cabinet Members with responsibility for finance and waste. The JC is Chaired by the Waste Cabinet Member for Cardiff Council in recognition of their role as lead LA.

## **The Future**

17. For MCC and its PG partners the Contract gives the LAs long term security for the management of residual waste. Viridor are currently going through a Planning Application to increase the capacity of the plant to 425,000 tonnes. The Partnership continues to monitor tonnages and engage effectively to ensure there is robust scrutiny and ownership of the Contract. One of the biggest risks with a long term contract such as this is changes to staff and Members in constituent Councils and due to the ease and effectiveness of the facility complacency sets in and Council's lose knowledge about purpose and risks of PG overall. This is managed through close dialogue between the Councils and it is proposed that each year Scrutiny Committee receive an update on the Contract's performance to keep the project and its performance on the radar of MCC.

## **Recommendation**

18. Members note the above report.

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<b>SUBJECT:</b>	<b>PROSIECT GWYRDD/PROJECT GREEN</b>
<b>MEETING:</b>	<b>Council</b>
<b>DATE:</b>	<b>28th FEBRUARY 2013</b>
<b>DIVISIONS/WARDS AFFECTED:</b>	<b>All</b>

Supporting and background papers to this report contain information which are exempt from publication under paragraphs 14 (information relating to financial or business affairs) and 21 (public interest test) and/or 16 (legally privileged information) of Schedule 12 A part 4 of the Local Government Act 1972.

It is viewed in the public interest to treat the documents referred to above as exempt from publication. Put simply, the rationale for this is that in order for the Authority to be able to effectively evaluate tenders received it requires bidders to provide details of the commercial make up of their bid which they may not do if they thought such information would be made publicly available. The adverse impact on contractual negotiations due to such disclosure would result in a less effective use of public money. Disclosure of legally privileged information could materially prejudice the authority's ability to defend its legal interests. Therefore on balance, it is submitted that the public interest in maintaining exemption outweighs the public interest in disclosure. That said redacted versions of key documents will be made available.

## **1 PURPOSE**

**1.1** The purpose of this report is to describe the outcome of the Prosiect Gwyrdd procurement process, as approved by Council in July 2009 and, to seek Council approval to appoint Viridor as the Preferred Bidder for Prosiect Gwyrdd, to approve the Final Business Case (FBC) and to approve the Joint Working Agreement (JWA2).

## **2 RECOMMENDATIONS :**

- (i) that Viridor is appointed as the Preferred Bidder;
- (ii) that authority is delegated to the Senior Responsible Officer of the Project Board (in consultation with the Project Board) for finalisation of the procurement to successful contractual close (including any refinement of documentation (as referred to in the report));

(iii) that the Final Business Case (FBC) is approved, including the improved affordability position in terms of both i) the large reduction compared to the original OBC affordability threshold and ii) the significant costs saving relative to continuing to landfill residual waste;

(iv) that, subject to Cardiff Council agreeing, Cardiff Council acts as Host Authority (as defined in the Joint Working Agreement 2 (JWA2));

(v) that the JWA2 is approved (on the understanding that it is subject to any refinement and finalisation as per recommendation (vi));

(vi) that authority is delegated to each Council's Senior Responsible Officer (SRO) on the Project Board to finalise and conclude the JWA2 agreement (including any refinements pursuant to recommendation (ii) on behalf of their respective Authorities;

(vii) subject to WG approving the FBC and confirming subsequent funding, conclusion of the JWA2 and Cardiff Council agreeing to act as Host Authority, that a relevant authorised officer of Cardiff Council on behalf of the Partnership signs the Project Agreement with Viridor;

(viii) that, subject to i - vii above, that following consultation with the s151 Officers from each Partner Authority the s151 Officer from Cardiff Council signs the certificate pursuant to the Local Government (Contracts) Act 1997 on behalf of the other Partner Authorities.

### **3 KEY ISSUES**

3.1 In July 2009 Council approved the procurement of a joint waste facility to deal with our residual ( or non-recyclable) waste with Cardiff, Newport, Caerphilly and Vale of Glamorgan Councils. That procurement process has now reached a point where a preferred bidder has been identified after a highly competitive and robust procurement process. The bid meets all the requirements set out in the Outline Business case presented to Council at that time and a Final Business Case is attached that demonstrates the strong outcome achieved. In addition the second Joint Working Agreement (JWA2) that will cover arrangements from this stage through commissioning to service operation has been prepared and this report and the attachments highlight the benefits and obligations that the JWA2 affords to each of the Partner Authorities.

3.2 A number of attachments come with this report as follows;

**Appendix 1 - The Common Report** – a detailed report that will be presented to all five partner Councils

**Appendix 2 - The Final Business Case (FBC)** – with some light redactions



### **Appendix 3 - Appendices to the Final Business Case – with some light redactions**

### **Appendix 4 - The second Joint Working Agreement – JWA2**

- 3.3 Prosiect Gwyrdd (PG) is a residual waste treatment procurement project, undertaken in accordance with the EU Competitive Dialogue Procedure. In October 2012 Prosiect Gwyrdd received Final Tenders from Veolia and Viridor for energy from waste incineration facilities in Newport and Cardiff respectively. After a detailed evaluation process it can be reported that Viridor's submission scored very highly across the technical, legal and financial criteria and was the most economically advantageous tender overall.
- 3.4 The solution is a 350,000 tonnes per annum incinerator at Trident Park, Cardiff and is currently under construction. It is a heat enabled energy recovery facility producing green electricity, with plans to supply heat to local buildings which will further improve the facility's environmental performance. The facility is a 'merchant facility' – that is, it is larger than Prosiect Gwyrdd's requirements, will have waste suppliers other than Prosiect Gwyrdd and ownership will not revert to the Partnership on contract expiry.
- 3.5 At the Detailed Solution stage in December 2011 the evaluation scores of the two remaining bids were very close – both representing acceptable and competitive proposals. From January 2012 to Final Tenders in October 2012, robust negotiation resulted in Viridor's tendered payments over the life of the contract reducing by an estimated £90m; more than a 17% reduction in price. The contract therefore represents very good value for money.
- 3.6 When Council signed off the Outline Business Case (OBC) in 2009 members agreed an overall Upper Affordability Threshold of £443m – this is what the project could afford. Anything above this would have been unacceptable. The outcome of the procurement process has resulted in The Net Present Value (NPV) cost of the new service being £222M – almost half the original acceptability threshold. The table and graph below (see Table A & Figure A) compares the projected annual payments from 2013/14 until the end of the contract in 2040/41 for continuing to landfill residual waste compared with the cost of Viridor's energy from waste solution. The Monmouthshire position is highlighted. This illustrates the significant savings to the Partner Authorities throughout the contract term of Viridor's solution. At the start of the new service (in April 2016) the price will be substantially lower than the price each Partner would be paying if they continued with their existing (landfill) disposal service. The WG contribution will reduce the price per tonne by approximately a further 25%. A graph showing the Monmouthshire only position is shown below at Figure B.
- 3.7 At Contract Commencement (April 2016), the estimated first year saving to the Partnership as a whole (including the benefit of the WG funding) as compared to the cost of continuing with the current landfill disposal arrangements for one year is greater than £11 million. This is equivalent to the Partnership's combined residual waste disposal budget reducing by a half. Figure A also demonstrates that the Partners aggregated current residual waste disposal budgets are sufficient to fund the costs of Viridor's solution over the contract term. For Monmouthshire that

first year saving is some £750,000 - £1m (depending on tonnage collected). Given the financial situation facing the authority (MTFP – £16m saving needing to be delivered over the next four years) this project will deliver a significant saving to MCC.

- 3.8 Furthermore, as only a proportion of the gate fee will be subject to indexation, the cost of the contract will rise, year-on-year at a much lower rate than inflation over the 25 year period. This makes the contract highly affordable for the Partner Authorities. As well as being a cost benefit, the solution is also more sustainable and environmentally friendly than existing landfill practices. The solution will produce renewable energy. It will be a high efficiency power facility, designated as 'recovery' rather than 'disposal' under EU definitions. Viridor is also exploring opportunities to export heat (as well as electricity). This improves further the facility's efficiency, its overall environmental performance and reduces its carbon footprint as compared to landfill.
- 3.9. Viridor has guaranteed to recycle 100% of the incinerator bottom ash (IBA) using a local recycling business within 5 miles of its site - Trident Park. It has also made a commitment to recycling the smaller volume of fly ash or Air Pollution Control Residues (APCR), as soon as practicable recycling processes have been developed for this material.
- 3.10 Incineration is one of the most highly regulated industries in Europe. Strict emission standards are enforced by the Environment Agency. The Health Protection Agency (HPA) has reported that modern well managed incinerators only make a very small contribution to local concentrations of air pollutants. They also state that any impacts on health (if they exist) are likely to be very small and not detectable. There will also be constant monitoring facilities and if the systems identify an issue the plant is automatically shut down.
- 3.11 The Joint Scrutiny Panel, set up to scrutinise the work of Prosiect Gwyrdd, undertook a very comprehensive and wide-ranging 'Call-for-Evidence' on the health impact of incinerators. The panel which reported in July 2012 did not find any validated scientific evidence that modern well run incinerators posed a significant risk to health. In its submission to the recent WG Petitions Committee, the Chartered Institute of Environmental Health said that: *"incineration of waste when controlled by the current statutory framework does not pose a risk to human health or to the environment"*.
- 3.12. Viridor's facility will be a modern, clean and efficient incinerator. It will be a significant environmental improvement on the Partners' current landfill disposal arrangements. The proposal is in line with Welsh Government (WG) Policy and supports the Partners' waste management strategies – including their drive to continually increase recycling to at least 70%. This is a highly capital intensive and complex facility. During negotiations, the Project Team was firm in not taking on any inappropriate risk. Furthermore, and given the 'merchant' nature of the facility, key risks were transferred to the contractor to protect the interests of the Partners. As planning permission and environmental permits have been secured and construction has already commenced; a number of the most significant deliverability risks have been removed or reduced.

- 3.13. Prosiect Gwyrdd has ensured that performance controls and flexibility are embedded in the contract. The Partners can be assured that Viridor will be obliged to deliver the high quality service it has promised. The contract has effective quality control measures and financial corrective mechanisms. Furthermore, if circumstances change over the 25 year period, the contract is flexible enough to accommodate legislative, physical or operational changes to the facility.
- 3.14 Project Gwyrdd was one of the flagship collaboration projects when joint working was first promoted by Welsh Government under the Making the Connections Agenda. Therefore WG has actively supported the Procurement from the outset in policy, political and financial terms. Having approved the Outline Business Case (OBC) by WG in 2009, it has provided approximately £1.173 million contribution to the cost of the procurement. Furthermore, it has provided an expert project Transactor to advise throughout the process and has undertaken a number of project health checks. Importantly WG will also commit to a funding contribution of approximately 25% of Viridor's price for the 25 year contract period., equivalent to some £9 m a year.
- 3.15 In summary, this is an affordable, environmentally and financially sustainable solution that represents excellent value for money with a relatively low deliverability risk.

**Table A – PG Affordability Analysis Nominal Costs**

	Preferred Bidder Whole System Costs (PB)	Landfill ( Do Minimum)	Budget	Affordability Savings (PB vs Do Min)
Caerphilly	86	183	95	-97
Cardiff	157	400	186	-243
Monmouthshire	60	107	87	-47
Newport	68	127	60	-60
Vale of Glamorgan	69	131	86	-62
<b>Project Gwyrdd</b>	<b>440</b>	<b>919</b>	<b>514</b>	<b>-509</b>

**Figure A - PG Affordability Analysis Nominal Costs**

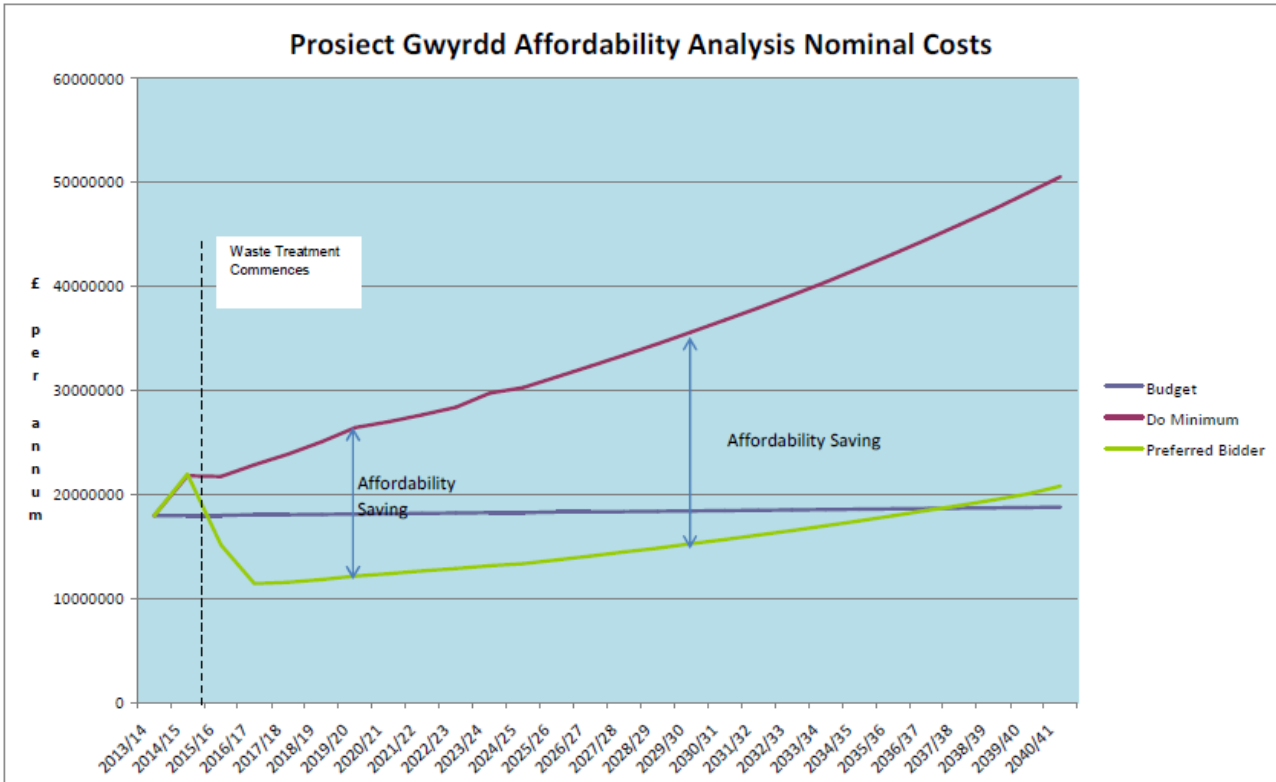
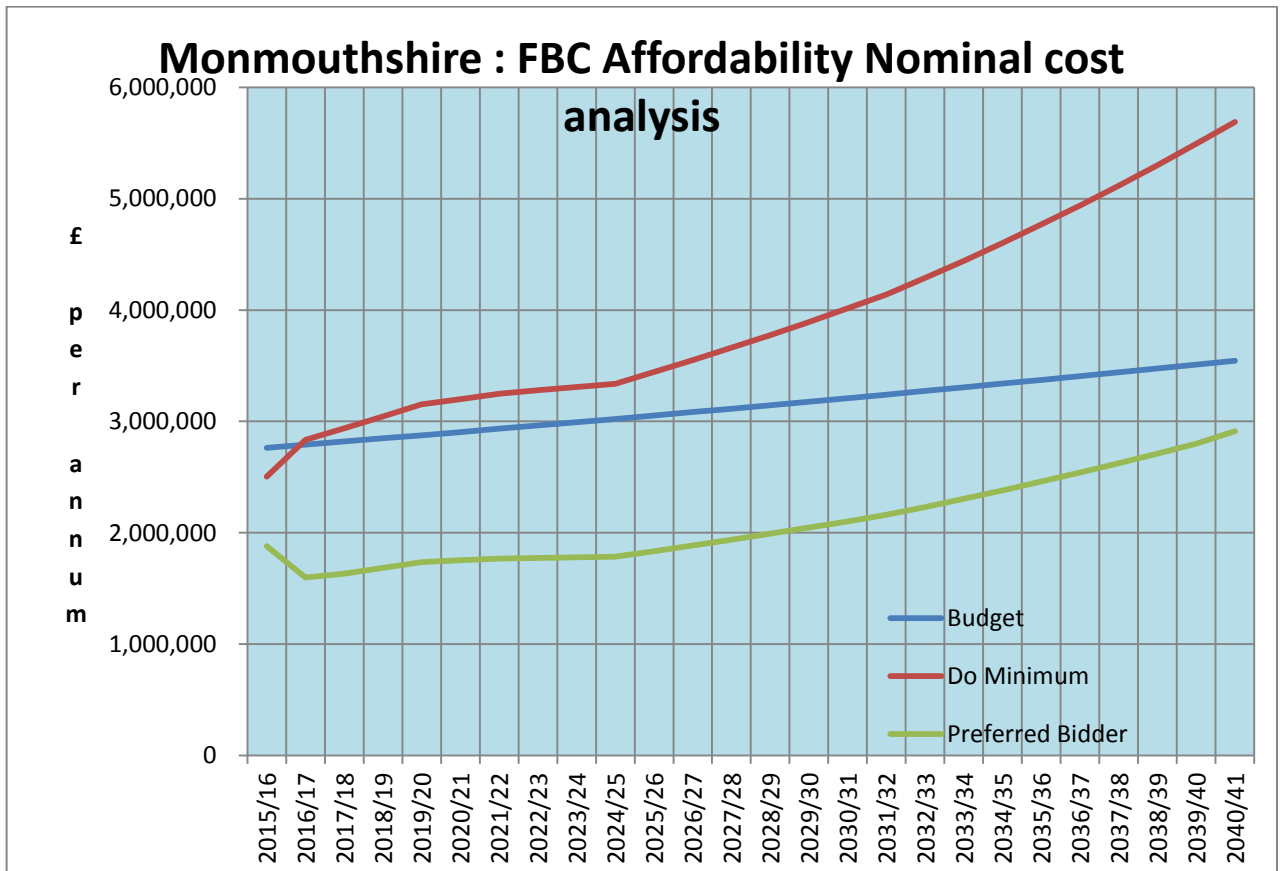


Figure B Graph Showing Monmouthshire Position



3.16 This proposal and associated paperwork has been reviewed and scrutinised through the governance structure of the Project. The Prosiect Gwyrdd Joint Committee considered the Common Report, FBC and JWA2 reports on Thursday 7<sup>th</sup> February 2013 and were satisfied with the procurement process and recommended that each partner Local Authority approve the above recommendations. To also note that the Joint Scrutiny Panel met on 13<sup>th</sup> February and also confirmed approval of the reports and recommendations.

### 3.17 The Procurement Process

The formal procurement process commenced in late 2009 and has followed the EU Procurement Regulations with the key stages shown below. More detail on the process is set out in the Common Report attached.

- Outline Business Case (OBC) & Report with scoring matrix - June 2000.
- OJEU Notice - Nov 2009 – open worldwide
- An Industry Day – Dec 2009
- Pre-Qualification Stage –Jan 2010, Legal & Finance Checks
- 14 Companies met requirements
- 8 best scoring companies / submissions identified
- Invite Outline Solutions (ISOS) - May 2010,
- Invite Detailed Solutions (ISDS) – Dec 2010, to 4 best scorers – 2 subsequently withdrew
- Invite Final Tenders – Dec 2011 - 2 companies
- Bids returned Sept 2012

## The Financial Business Case

### 3.18 Purpose of the FBC

The purpose of the FBC is two-fold. Firstly it provides a tool for the Partnership (and its stakeholders) to analyse the outcome of the procurement process and answer a number of questions about the proposed solution, including:

- does it address all of the Partnership's requirements?
- does it represent good value for money?
- is it affordable?
- is it in line with national Waste Policy?

Secondly, it is a mandatory document which forms part of WG's revenue support award process (which is worth approximately 25% of the contracted gate fees to the Partner Authorities over the 25 year contract).

3.19 The FBC is structured into separate but inter-related business cases:

- The Strategic Case;
- The Economic Case;
- The Commercial Case;
- The Management Case;
- The Financial Case.

### 3.20 **The Strategic Case**

This considers key issues including, waste minimisation, recycling performance, landfill diversion, energy efficiency and environmental impact.

3.21 In summary, the Strategic Case found that Viridor's solution is a good fit with the Partners waste strategy objectives and it has commitment to recycle 100% of its bottom ash and recycling its APCR as soon as practicable. This will make a positive and significant contribution to the Partners achieving the statutory 70% recycling targets. Furthermore, apart from the relatively small quantities of air pollution control residue (APCR) (until this will be recycled) no other waste will be landfilled.

3.22 Viridor's facility is also very energy efficient and as such is classed as 'recovery' rather than 'disposal' under the EU waste hierarchy definitions (R1). Viridor is also actively looking for customers to take heat directly from the facility. This will further improve the energy efficiency and therefore the carbon footprint of the facility. The overall environmental impact of Viridor's proposal is a significant improvement on the current landfill-based disposal methods. Most notable is the reduced net carbon emission resulting in a much lower climate change impact from the Partners' waste activities.

### 3.23 **Economic Case**

This section of the FBC is to demonstrate that the Partnership has run a competitive procurement structured in accordance with the proposals in the OBC and in line with EU procurement rules. The economic case also considers the flexibility built into the contract; testing its ability to adapt to various changes in circumstances over the 25 year contract duration. Indeed the negotiated contract is flexible and adaptable to changes such as: new legislation; changes to the waste profiles and variations that might be instigated by a Partner's change in Policy.

3.24 The Economic Case shows that the process was highly competitive, right up to the submission of the Final Tender. Viridor's proposal is significantly better value and more affordable than the Reference Case that was modelled in the OBC. Financial analysis demonstrated that, under competitive pressure, Viridor reduced its Tendered price by more than 17% in the Call for Final Tender stage compared with its Detailed Solutions submission. Furthermore, benchmarking against approximately 20 other similar and recent waste projects, on a like-for-like basis demonstrated that Viridor's Prosiect Gwyrdd tender is one of lowest priced contracts of this type in the UK.

### 3.25 **The Commercial Case**

The Commercial Case considers how the key approach to project risk that was assumed in the OBC has changed for the Preferred Bid. Key to this type of project is ensuring the appropriate level of risk transfer from the Public to the Private Sector. The general assumption is that the Public Sector requires a degree of certainty and attempts to transfer risk to achieve this. However, if too much risk is transferred, the Contractor will price it, putting the cost up and therefore undermining Value for Money.

3.26 In Viridor's case, a number of the risks normally associated with Projects of

this nature were significantly reduced. Some of the differences to a 'standard' risk profile include:

- Due to its 'merchant' nature, Viridor's facility will not transfer to the Partnership so there is no risk with hand-back;

□□□□□ The facility is able to treat waste in excess of the partner's requirements

and has an economic life which is longer than the contract.

- The facility already has planning permission and environmental permits. This negates the risk of future planning failure which would have significant cost and other impacts on the Partnership;

- Construction has commenced and the facility should be operational well before the planned service commencement for Prosiect Gwyrdd. This reduces the potential risk of construction delay.

3.27 All the 'derogations' to WG's standard contract needs sign-off by the WG before funding can be approved. The WG undertook a Commercial Health Check before submission of final tenders. The aim was to check the agreed commercial positions and approve the proposed derogations. In a letter dated the 17 October 2012 following the Health Check, the WG confirmed that it was content.

### 3.28 The Management Case

The management case reviews the Project Management and Governance of the procurement – ensuring that it has been in line with best practice and the arrangements outlined in the OBC. It also looks forward to ensure that sufficient resources have been identified for managing the contract throughout the transition and operational phases.

3.29 The Project has been well managed throughout the procurement process with an appropriate governance structure, Member input has been strong throughout and overview and scrutiny has worked in line with the Joint Working Agreement. An indicative Budget has been allocated for the post-procurement phases and a Transition Plan is being developed. The second Joint Working Agreement (JWA2) will govern the Partnership during the operational phase.

### 3.30 The Financial Case

The financial case analyses the cost of Viridor's solution and tests that it is Meets the affordability set out in the OBC. Furthermore approval of the FBC and the relevant affordability position will underpin the decision by elected Members for the Project to proceed to Financial Close.

3.31 The financial case for Viridor as compared with that of the OBC reference case and current landfill (do minimum) disposal option is very strong. The project is affordable and good value for money as demonstrated above. The graph in Figure A highlights the significant saving the Viridor solution offers compared to continuing to landfill residual waste for the partnership and in Figure B for Monmouthshire..

3.32 On approval of the FBC by the WG, the WG will agree to pay the Partnership revenue support which is approximately 25% of the contract value based on estimated profile tonnages and will be paid quarterly on an annuity basis. At Contract Commencement, the estimated saving to the Partnership as a

whole (including the benefit of the WG funding) as compared to the cost of continuing with the current landfill disposal arrangements is greater than £11 million. This is equivalent to the Partnership's combined residual waste disposal budget reducing by a half. For Monmouthshire the first year saving is some £750,000 - £1m.

## **The Second Joint Working Agreement (JWA2)**

- 3.33 At the beginning of the Procurement in 2009, the Partner Authorities signed a Joint Working Agreement (JWA1) to regulate working arrangements and decision making among the Partners. This agreement ends when the waste contract is signed with Viridor.
- 3.34 Prosiect Gwyrdd as an entity does not have the legal powers to enter into a Contract. It is therefore proposed that one of the Partner Authorities is nominated to be the counter-party to the waste contract with Viridor. Given that the facility is located in Cardiff it is recommended that Cardiff Council will take on the role as 'Host Authority' for this purpose.
- 3.35 As the Host Authority will take on the full contract responsibility on behalf of the Partnership, it requires back-to-back assurances that each Partner will meet its obligations in a timely manner to ensure that the Host is never exposed to unreasonable contractual liabilities. Also, each Partner needs assurance that they will receive all the contractual benefits that they are entitled to – even though they have not directly signed a contract with Viridor. This is one of the primary objectives of the second Joint Working Agreements (JWA2). The JWA2 is attached at Appendix 4
- 3.36 The overarching purpose of JWA2 is to ensure that the five Prosiect Gwyrdd Authorities are able to work effectively together in true Partnership and with Viridor to get maximum benefit from the residual waste treatment contract. JWA2 accommodates the Host Authority structure described above, to ensure that the Host Authority isn't exposed to disproportionate liability and that the contractual rights and obligations appropriately flow down to all the Partners.
- 3.37 At its most basic level, having signed the Contract, the Host Authority is committed to the delivery of all Prosiect Gwyrdd's waste and the full payment for its treatment. Viridor, for its part, is obliged to accept and treat the waste. Given this commitment, the JWA2 needs to ensure that each Partner is committed to deliver its waste to Viridor and pay the Host Authority the correct amount **in advance** of the Host Authority having to pay Viridor. JWA2 also regulates such things as:
- The payment mechanism;
  - Decision making;
  - Termination and withdrawal (of the JWA2);
  - Flexibility to Contract Changes and Changes in Law.

## **Table C – Table Showing Minimum & Maximum Tonnages**



	Minimum Tonnage	Profile Tonnage	Cost Sharing Ratio %	Maximum Tonnage
Monmouthshire	13,134	16,752	9.7%	21,403

3.38 Other financial costs and benefits will be shared proportionally between the Partners unless it is specific to a particular Authority, in which case it would get that benefit or incur the cost. An example might be a deduction imposed on the contractor for excessive vehicle turnaround times – if that affected just one partner, then that sum would flow back to it.

**3.39 Decision Making**

The Partnership will recruit a suitably qualified Contract Manager to run the Contract, answerable to the Partnership (through the Contract Management Board and Joint Committee). The Contract Manager will have sufficient Authority to make day-to-day decisions and will liaise on a regular basis with key personnel at each Authority and, with the Contract Management Board and the Joint Committee. Each of these will have threshold limits for any expenditure. For those decisions with a budgetary impact (most likely to be contract changes or variations), the threshold limits for the Contract Manager will be up to £250,000, the Contract Management Board up to £500,000 and the Joint Committee up to £1M with decisions over this threshold being the responsibility of the Partner Authorities. The thresholds specified are aggregated amounts for PG and will be allocated between partners using the Cost Sharing Ratio outlined in the Common report, for Monmouthshire this would be 9.7%.

**3.40 Termination and Withdrawal**

The JWA2 will commence at the same time as the main Prosiect Gwyrdd contract and will expire six months after the expiry of the Prosiect Gwyrdd contract (if not terminated earlier). The JWA2 makes provision for termination by one of the Partners in the event of an unresolved serious breach. An example of such a breach would be the wilful non-payment of their share of the disposal charge to the Host Authority. The defaulting Partner Authority would be liable for any increased cost to the other Partners that result from the default.

**3.41 Flexibility to Change**

The JWA2 reflects the flexibility embedded in the main Prosiect Gwyrdd Contract to accommodate changes in law or a contract change required by one or more of the Partners. If a change in law (for example tighter emission standards requiring extra pollution control equipment) occurs, then under the contract, Prosiect Gwyrdd will pay its share. The JWA2 distributes this share between the Partners on the basis of their tonnage profile (see Cost Sharing ratio in Table E above).

**3.42 JWA2 Summary**

The JWA2 attempts to reflect, where appropriate, the Project Agreement (PA) between the Partnership and the Contractor. As described above, because

the Partnership, as an entity, does not have the legal powers to sign the PA; this role will need to be taken on by one of the Councils – the Host Authority. As Viridor's facility is located in Cardiff, it is recommended that Cardiff to take on the Host Authority role. The JWA2 tries to balance the potential conflicts: that the Host Authority, as PA counter-party, is not over-exposed in terms of risk and liability; and that the other partners get their fair share of the contractual rights and benefits.

### **The Proposed Residual Waste Treatment Contract -sometimes referred to as the Project Agreement (“PA”)**

- 3.43 The PA is the contract that is concluded between the Preferred Bidder (who at that stage is referred to as the Contractor) and the Host Authority). The PA is based on WG's Standard Form Residual Waste Contract. At its simplest, the PA provides that the Contractor is obliged to provide the residual waste solution to the Partner Authorities for the contract term (25 years) and in turn obliges the Host Authority to pay the Contractor. The PA is a key document. The PA (including its schedules) is a comprehensive document running to over 400 pages so it is not practical to explain each of the contractual provisions in this report.
- 3.44 Due to the merchant nature of the Preferred Bidder's solution and to reflect the commercial proposal put forward by the Preferred Bidder, a number of changes to the standard form residual waste contract are required. These changes are referred to as “derogations”. The full list of the derogations proposed are set out in the final business case. Because the project receives WG grant funding the derogations to the standard form of contract need to be approved by WG. Accordingly, throughout dialogue discussions have been held with representatives of WG concerning the derogations proposed. As stated, the formal derogations table is included in the final business case, which will be submitted to WG for approval.
- 3.45 Some key contract provisions to note are as follows:-
- (i) The proposed contract is for a term of 25 years with an option to extend.
  - (ii) The services are due to start in 2016.
  - (iii) The contract sets out what happens in the event of default by the Contractor, how disputes are to be resolved and what “events” enable the Host Authority to withhold/set off payments and ultimately terminate the contract.
  - (iv) The proposed solution is a merchant facility. What this means is that the facility has not been built to specifically meet the partner authorities needs, it is larger than the partners' requirements, will have waste suppliers other than partners' waste and ownership of the facility will not revert to the authorities when the contract expires.

(v) Payment provisions. Reference is made to the obligation to pay the guaranteed minimum payment “GMP”, which is calculated by reference to a notional minimum waste tonnage. The key legal point is that the guaranteed minimum payment will have to be paid even if the authorities do not deliver the equivalent notional minimum waste tonnage. The PA obliges the contractor to seek out “substitute waste” in circumstances where there is a shortfall in the Partnership's waste arisings.

(vi) The PA contains provision in regards to the Environment Agency’s R1 standards. This is a WG funding condition;

(vii) Change in law. The PA contains provisions to deal with changes in law and who bears any consequential costs that flow.

### **Next steps**

- 3.46 If all the recommendations are approved by each Partner Authority, Viridor will be issued a detailed letter outlining the conditions on which they have been appointed Preferred Bidder. After a statutory 10 day ‘stand still’ period (EU procurement rules set out provisions to standstill periods and time limits within which challenges can be brought by an aggrieved bidder). All the contractual documentation will be checked and finalised. As described above, that is limited to ‘fine tuning’, will ensure that the Project Agreement, all its schedules and the JWA2 are ready to sign. In parallel to this we expect to get sign-off of the FBC by the WG and formal approval to a funding contribution of approximately 25% of Viridor’s price for the 25 year contract period.
- 3.47 The contract (including certificate as referred to in recommendation viii) and the JWA2 is expected to be signed in July 2013 but the Service will not commence until April 2016. The time between signing the contract and service commencement is the ‘Transition Period’. During this period the Contractor will finish constructing the facility, providing regular progress reports to the Partnership. The Partnership will set up reporting and payment systems, develop a detailed contract management manual and generally plan for the operational phase (including for the establishment of the Contract Management Team). In September 2015, commissioning with the Partnerships’ waste will start. This requires all the Partnership’s waste that would otherwise be going to landfill and the Partnership will be charged a reduced cost.
- 3.48 The 25 year Service period will commence in April 2016. At the end of the 25 year period, if one or more of the Partners want to continue under the same contract, they have the option to extend for a further 5 years.

## **4. REASONS:**

- 4.1 In July 2009 Council approved the procurement of a joint waste facility to deal with our residual ( or non-recyclable) waste with Cardiff, Newport, Caerphilly and Vale of Glamorgan Councils. That procurement process has now reached a point where a preferred bidder has been identified after a highly competitive and robust

procurement process. The bid meets all the requirements set out in the Outline Business case presented to Council at that time. The Final Business Case referred to above and attached demonstrates how strong that business case is. In addition the second Joint Working Agreement (JWA2) that will cover arrangements from this stage through commissioning to operation has been prepared and is attached. This report and the attachments highlight the benefits and obligations that affords to Monmouthshire and the other Partner Authorities.

- 4.2 Approval of the recommendations will allow the Council to move away from landfill and comply with the Welsh Governments targets to reduce landfill to 90% by 2020 and 95% by 2025. It will also significantly help the Council to meet its statutory recycling target of 70% set for 2025 and avoid the penalties of £200 per tonne both for recycling and landfill diversion targets. It also meets all the environmental and sustainability requirements, shows strong collaboration between local authorities and Welsh Government and at the same time will save the Council approximately £1m per year on its projected waste disposal costs from 2016 to 2041.

## **5 RESOURCE IMPLICATIONS**

- 5.1 Approval of the recommendations commits the Council to a contract that will run for 25 years from April 2016 to 2041. The resource implications of that are shown above and in the attached papers but in summary means a cost of £60m in net present values (NPV) terms over the 25 year period. That compares to the projected costs of continuing with landfill of £107m on the same NPV basis, a £47m saving. There are also costs associated with the period between appointment of preferred bidder to commencement of the project in 2016. In 2013 -14 this is estimated at £83,333 which includes the costs of completing the procurement and in 2014-15 of £36,000. In 2015-16 this would be £50,250 to include the costs of monitoring and in 2016-17 would be £55,000 to cover the full contract management position

## **6 SUSTAINABLE DEVELOPMENT AND EQUALITY IMPLICATIONS**

- 6.1 By proceeding with the solution offered by Viridor the Council it will significantly reduce its carbon emissions by moving away from landfilling its waste. Landfill produces both methane and carbon dioxide as it decomposes and this is one of the main reasons Welsh Government have set strict limits for landfilling in the future. In addition the process proposed will provide electricity and heat as by-products therefore reducing the need for other sources of natural materials as fuel. This will provide a better environment for all citizens in Monmouthshire as well as Wales.

## **7 CONSULTEES:**

All Cabinet Members  
Strategic Leadership Team  
Robert Tranter – Head of Legal Services  
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