

Report of the Director of City Strategy and
Director of Customer & Business Support Services

AWARD OF LONG TERM WASTE MANAGEMENT SERVICE CONTRACT

The report contains information of the type defined in paragraph 3 of Part 1 of Schedule 12A Local Government Act 1972.

Summary

1. To advise the Executive on the outcome of the procurement of a contract for a long term waste management service.
2. To request that the Executive recommends that Full Council:
 - a) agree to the award of the long term waste management service contract to AmeyCespa.
 - b) commits to making budgetary provision for the term of the contract in the event that the contract proceeds to financial close.
 - c) agrees to enter the Waste Management Agreement with North Yorkshire County Council

Background

Introduction

3. The County Council and City of York Council currently rely on landfill as the primary method of disposing of waste that cannot be recycled or reused. This is not a sustainable strategy for the future as:
 - landfill capacity is reducing and under current waste inputs the two main sites serving North Yorkshire and York in the next few years will be Allerton Park and Harewood Whin.
 - The cost of landfill is increasing as a result of landfill tax and there are significant potential penalties for failure to meet targets under the Landfill Allowance Trading Scheme (LATS).
 - The Department for Environment, Food and Rural Affairs (Defra) has identified landfill as the least acceptable option in environmental terms for disposing of waste. Methane from

landfill accounts for 40% of UK methane emissions and is 21 times as powerful a greenhouse gas as carbon dioxide (Consultation on the introduction of restrictions on the landfilling of certain wastes, Defra, March 2010).

4. Furthermore, the Government has made it clear that the bulk of the current national deficit reduction will be achieved through reductions in public spending, which will have a significant impact on both Councils' budgets.
5. York and North Yorkshire have therefore worked together to identify an appropriate and proportionate solution for the treatment of residual waste which maximises benefits, value for money and offers the opportunity to reduce future costs and minimise risk.

Duties and strategy

6. Part II of the Environmental Protection Act 1990 sets out a regime for regulating and licensing the acceptable disposal of controlled waste on land. Controlled waste is defined as any household, industrial and commercial waste. The County Council as a Waste Disposal Authority has a statutory duty to arrange for the disposal of household and commercial waste collected by waste collection authorities, and to provide places where residents can take their own waste for disposal. The City of York Council, as a unitary authority, has a statutory duty for both waste collection and waste disposal.
7. The EU Landfill Directive 1999 sets targets to reduce biodegradable waste going to landfill to 75% of 1995 tonnages by 2010, 50% by 2013 and 35% by 2020. These targets have been incorporated into UK legislation through the Waste and Emissions Trading Act 2003 (the WET Act).
8. The WET Act is intended to help the UK meet its obligations under the Landfill Directive. The Act provides the legal framework for the Landfill Allowance Trading Scheme (LATS). The scheme requires Waste Disposal Authorities to reduce reliance on landfill as a method of disposal for biodegradable municipal waste each year. A penalty of £150/tonne will be incurred if either the County Council or City of York Council breaches its annual landfill allowance target. Furthermore, should the UK exceed its annual target under the Landfill Directive the Councils may be liable for an element of any national fine from the EU.
9. Landfill tax is levied on each tonne of waste sent to landfill. In 2010/11, the rate for active (biodegradable) waste is £48 per tonne and £2.50 per tonne for inactive (inert) waste. The Government have confirmed that the rate for active waste will rise at £8 per tonne per year until it is at least £80 per tonne. The combined cost to the County Council and City of York Council in relation to landfill tax in 2010/11 will be over £12 million.

10. The key objectives of the Waste Strategy for England 2007 (see **Appendix 1** Background Documents) are to:
 - Decouple waste growth (in all sectors) from economic growth and put more emphasis on waste prevention and re-use.
 - Meet and exceed the Landfill Directive diversion targets for biodegradable municipal waste in 2010, 2013 and 2020.
 - Increase diversion from landfill of non-municipal waste and secure better integration of treatment for municipal and non-municipal waste.
 - Secure the investment in infrastructure needed to divert waste from landfill and for the management of hazardous waste.
 - Get the most environmental benefit from that investment, through increased recycling of resources and recovery of energy from residual waste using a mix of technologies.
11. The National Strategy includes targets for:
 - Recycling and composting of household waste – at least 40% by 2010, 45% by 2015 and 50% by 2020.
 - Recovery of municipal waste – 53% by 2010, 67% by 2015 and 75% by 2020.
12. The Government is currently undertaking a full review of waste policy in England due to be completed by summer 2011. However, the Coalition Government has stated that: “We will introduce measures to promote a huge increase in energy from waste through anaerobic digestion” (The Coalition: our programme for government, May 2010).
13. The Coalition Government has also stated that: “Energy from Waste (EfW) can be an effective waste management option” (Defra review of waste policy, background information, 29 July 2010).
14. More recently, Waste and Recycling Minister Lord Henley is reported as stating: “I think there are many occasions where incineration is going to be the preferred route over anything else because it is the only route” (speaking on a visit to SITA UK's materials recycling facility in West Sleekburn in Northumberland, August 17 2010).
15. Furthermore Defra's Deputy Director in charge of waste strategy, Diana Linskey, spoke at the Local Authority Recycling Advisory Committee (LARAC) 2010 conference outlining how the Coalition Government was approaching EfW incineration. She is reported as saying it was looking at: “Developing a more mature narrative on incineration,” adding “We all know it's good and clean and has a place to play” (Diana Linskey, Deputy Director Defra, LARAC 2010 conference, 3 November 2010).
16. The York and North Yorkshire Waste Partnership (YNYWP), which includes the County Council, the seven district and borough councils and the City of York Council, adopted a Joint Municipal Waste Management Strategy in 2002 called Let's Talk Rubbish. A revised version of this strategy called Let's Talk Less Rubbish was adopted by all Councils including the County Council and the City of York Council

in 2006 (see **Appendix 1** Background Documents). The strategy identifies the following key objectives:

- To reduce the amount of waste produced in North Yorkshire and York.
 - To promote the value of waste as a natural and viable resource, by:
 - a. Re-using, recycling and composting the maximum practicable amount of household waste
 - b. Maximising opportunities for re-use of unwanted items and waste by working closely with community and other groups
 - c. Maximising the recovery of materials and/or energy from waste that is not re-used, recycled or composted so as to further reduce the amount of waste sent to landfill
17. The strategy is not specific in identifying the technology to treat residual waste in the future. It states that the Partnership: “Consider it prudent to keep the specific choice of treatment option open and to assess the available options offered by the market at the time of going to tender” (Let’s Talk Less Rubbish, 2006-2026, page 22).

Progress to date

18. The Executive has previously considered a number of reports on the long term waste management service procurement process (see **Appendix 1** Background Documents).

Executive Decisions

19. On 26 June 2007 the Executive authorised the Director of City Strategy to commence formal procurement of residual waste treatment facilities as a PFI project.
20. On 23 October 2007 the Executive authorised the Director of City Strategy and Head of Civic, Democratic and Legal Services, to complete final drafting and enter into an Inter-Authority Agreement (IAA) with North Yorkshire County Council. On the 21 January 2008, the Councils jointly signed the IAA (see **Appendix 2a**) which sets out arrangements relating to the joint procurement of certain waste management services. This agreement was subsequently updated and re-signed on the 24 November 2009 to clarify the arrangements for decision making relating to the project. (see **Appendix 2 (b)**).
21. Although a joint procurement approach has been adopted, the Councils were advised that the project would be more attractive to the competitor market if there was a ‘lead’ authority. Therefore, if it is decided to proceed with the contract, it is the County Council alone which will enter into the proposed contract with AmeyCespa; and the County Council will agree with AmeyCespa to deliver waste from both the North Yorkshire and York areas. At the same time the County Council will enter into a separate Waste Management Agreement (WMA) with the City of York Council under which the County Council will agree to arrange for the management of the waste collected in the

City of York area. The City of York Council will agree to arrange for delivery of waste and pay the County Council for its treatment by AmeyCespa. This agreement reflects the key contractual obligations that are within the contract between Amey Cespa and North Yorkshire County Council. The latest draft version of the Waste Management Agreement is available for inspection by Members on request as a confidential background document to this report.

22. This report is primarily concerned with the decision whether to award the proposed contract to AmeyCespa and with the related contract between the County Council and the City of York Council. Should it be decided to award the contract, AmeyCespa will be responsible for securing planning permission and an operating permit from the Environment Agency (EA) for the proposed facility, which it is proposed be located at the existing Allerton aggregates quarry and landfill site.

Current performance

23. The Let's Talk Less Rubbish Strategy identifies the following key minimum performance targets:
- Recycle or compost 40% of household waste by 2010
 - Recycle or compost 45% of household waste by 2013
 - Recycle or compost 50% of household waste by 2020
 - Divert 75% of municipal waste from landfill by 2013
24. Although the National Indicator Set is under review by Government there are currently 3 National Indicators (NI) upon which Waste Disposal Authorities are required to report. A breakdown of performance for North Yorkshire, City of York and the combined York and North Yorkshire Waste Partnership is included as **Appendix 3** and a summary presented in the following paragraphs.

NI 191 - Residual household waste per household (kg/household)

25. This indicator measures the amount of waste that is sent to landfill after reuse, recycling and composting activities have taken place. In York, waste arisings are below average when compared to other unitary councils but the council is in the 3rd quartile when compared with all authorities. As the council has improved in the last few years, so others have improved at similar or faster rates.
26. A common characteristic of the best performers as well as the most improved over the last year is that they collect food waste at the kerbside separately to materials collected for recycling and composting and they take this food waste either to an anaerobic digestion plant or to an in-vessel composting plant. Many also have tough restrictions at household waste recycling centres such as limits on quantities of specific materials or restrictions on vehicle types that can use the sites.

NI 192 – Percentage household waste sent for reuse, recycling and composting

27. This indicator measures the amount of materials that are reused, recycled or composted. The partnership target of 40% by 2010 was exceeded in 2007/08, and York's figure has hovered around the 43-45% mark for the last 3 years. Projections show that York will achieve just over 44% this year. When compared to other unitary councils, York is performing in the top quartile. The best performing Unitaries recycle or compost around 5% more than York and so a small increase in performance will have a significant impact on comparative position. The treatment plant proposed under the contract includes front end mechanical treatment enabling the Councils to separate materials for recycling from the residual waste stream and so this additional diversion will make comparative performance better. Those councils that perform well in this indicator generally also perform well in NI191 i.e. have low waste arisings.

NI 193 - Percentage of municipal waste sent to landfill

28. This indicator measures the amount of waste sent to landfill by the councils in the area, and includes household waste and any commercial and industrial waste collected by the councils. Compared to other Unitaries, York is below average, landfilling 56.7% of its waste in 2009/10. A common characteristic of councils in the bottom quartile is that they do not have treatment infrastructure in operation, although many are in the process of procuring it. The best performers in this indicator are those that have residual waste treatment infrastructure, including energy from waste technology, in place and in operation for a number of years e.g. Stoke, Redcar and Cleveland, and Hartlepool (who landfill between 10% and 12%).

Procurement

Outline Business Case

29. On 12 September 2006 the Executive approved the submission of an Outline Business Case (OBC) to secure Private Finance Initiative (PFI) funding.
30. The OBC (see **Appendix 1** Background Documents) set out the proposed procurement strategy and made the case for securing PFI credits as a contribution towards the funding required to deliver an affordable and sustainable waste management solution for York and North Yorkshire.
31. The Executive have been regularly briefed on project progress and have made several decisions to approve updated project cost profiles. On 27 March 2007, the Executive resolved to commit to finding the additional resources to make the project affordable over the life of the

contract. On 26 June 2007, the Executive approved the start of the procurement process.

Private Finance Initiative (PFI)

32. The Private Finance Initiative is an initiative to help stimulate private sector investment in the delivery of public services that has been used by Government since the mid 1990s. Rather than the public sector funding the development of infrastructure, that development is instead funded by the private sector which recovers its outlay by charging for the use of the infrastructure asset. The cost of borrowing to the private sector is higher than it would be to the public sector; however other factors ensure the service provided to the public sector remains value for money. The private sector is responsible for the maintenance of the asset throughout its planned life and the public sector only make payment for the use of the asset once it is being used. Therefore the private sector contractor is highly incentivised to ensure that the asset is delivered to a higher quality than might otherwise be the case and that it is also delivered on time and on budget. Approval is only given for a PFI transaction where the public sector can demonstrate to HM Treasury that a sufficient level of risk has been transferred from the public sector to the private sector to outweigh the higher cost of funding.
33. PFI involves a complex contract being entered into between the public body and the private company; typically the private company is set up specifically for the purpose of the project. PFI contracts require the contractor to design, build, finance and operate the facility which will deliver the required services, typically, over a long period of up to 30 years. This duration facilitates the cost of the capital investment to be recovered in part by a charge made to the public body. A successful PFI will also attract revenue support from the Government, in the form of PFI credits.
34. In July 2007 the Councils received confirmation from the HM Treasury's Project Review Group and Defra that the project had been awarded £65m of PFI credits (see **Appendix 4 (a)**). The approval of the Final Business Case by Defra in June 2010 included an assessment of strategic fit with the new Coalition Government's priorities. Defra have also reaffirmed, post Comprehensive Spending Review October 2010, that the Government is still fully committed to the project and provision of the PFI credits (see **Appendix 4 (b)**).

Role of Waste Infrastructure Delivery Programme

35. The Waste Infrastructure Delivery Programme (WIDP) was set up by DEFRA in 2006/07 and works to ensure cost-effective and timely delivery of major waste infrastructure. WIDP brings together the resources and roles of Defra, Partnerships UK and Local Partnerships to support local authorities to accelerate investment in the large-scale infrastructure required to treat residual waste.

36. Throughout the procurement process dedicated support, known as a transactor, has been provided to the project by WIDP. A requirement of waste PFI projects is that WIDP are required to sign-off key stages of the procurement process to ensure the project remains deliverable and affordable. For this procurement the four stages have been; Outline Business Case (OBC); Final Business Case (FBC); 2nd Stage Review of affordability; and satisfaction of conditions applied prior to Commercial Close.

Role of Yorwaste

37. The Councils own the Local Authority Waste Disposal Company (LAWDC) Yorwaste. Yorwaste owns or controls a number of strategically placed sites and is the main waste management contractor for both the County Council and City of York Council. Yorwaste also provides services to other Local Authorities within North Yorkshire and the Region.
38. On the 12 September 2006 the Executive resolved that Yorwaste be requested not to participate in the PFI residual waste treatment procurement process. This was due to a range of issues but primarily because of the likely impact Yorwaste's involvement would have on competition and the potential for prejudicing the award of PFI credits (due to a lack of risk transfer and impact on competition). However, it is anticipated that Yorwaste will participate in the competition for waste handling and recycling services subject to normal competitive procurement processes.

Project Governance

39. Procurement of the long term waste management service has been overseen by a Project Board consisting of officers from the County Council, City of York Council and the WIDP transactor. Decisions relating to the project have been taken under the delegated authority granted by the County Council's Executive to the County Council Corporate Director, Business and Environmental Services, in appropriate consultation with the Project Board.
40. The process has been delivered by a Project Team led by the Corporate Director, Business and Environmental Services (North Yorkshire County Council), working closely with the Director of City Strategy (City of York Council). Support has been provided by a Project Director. This role was previously undertaken by an external consultant, but is now carried out by the Assistant Director Waste Management (North Yorkshire County Council). The Project Team consists of officers from the County Council and City of York Council, a number of external advisers (legal, financial, technical, insurance and planning), and the transactor from WIDP.

Competitive dialogue procedure

41. The County Council and City of York Council carried out formal procurement using the competitive dialogue procedure, which is regulated by the Public Contracts Regulations 2006. Procurement has also been undertaken in accordance with the Councils' own Contract Procedure Rules which form part of the Constitution. The competitive dialogue procedure is used in the award of complex contracts, where there is a need for the contracting authority to discuss all aspects of the contract with potential providers. Such dialogue would not be possible under the alternative 'open' and 'restricted' procedures. It requires the client to specify the procurement objectives in terms of outcomes rather than inputs or specified processes. The Council has therefore not specified the location for the facility, nor the technology required to operate it, both of which were for bidders to propose as part of the competitive dialogue procedure. Specifically, the Councils have sought to procure a solution to divert waste from landfill without specifying the technology. This is consistent with the Councils' waste strategy; Let's Talk Less Rubbish.
42. A Prior Information Notice (PIN) was published through the EU Commission on the 8 July 2006 (see **Appendix 1** Background Documents). The purpose of this exercise was to give advanced notice to the market of the forthcoming opportunity and it did not form part of the formal procurement. Interested parties were invited to participate in a 'funder' market testing day and a 'waste management provider' market testing day.
43. A Contract Notice was published through the EU Commission in the Official Journal of the European Union (OJEU) (see **Appendix 1** Background Documents) on 4 September 2007.
44. On 21 September 2007, the Councils held a Bidders' Day at the National Railway Museum in York. Around 20 companies from the waste management sector attended the event, received a presentation about the project and had the opportunity to meet members of the Project Team.
45. Companies that expressed an interest in bidding for the contract were issued with a Pre-Qualification Questionnaire (PQQ) and Descriptive Document (see **Appendix 1** Background Documents) that contained important information about all elements of the project.
46. In October 2007 completed PQQs were received from 12 companies or consortia. The PQQs were assessed in accordance with the Public Contracts Regulations 2006 by the application of predetermined criteria. This assessment included minimum pass criteria that applicants were required to fulfil.
47. The evaluation criteria used to assess potential solutions are included as **Appendix 5**. The Executive approved evaluation criteria on 23

October 2007 and authorised the Director of City Strategy, to utilise the proposed evaluation methodology, in consultation with the appropriate Executive and Shadow Executive Members.

48. These evaluation criteria were applied consistently throughout the process and were split as follows; 60 percent technical, quality and environmental criteria; and 40 percent financial criteria. The legal element of bids were assessed on a pass / fail basis. The evaluation criteria were lodged with Internal Audit on 18 December 2007.
49. At each evaluation stage; Invitation to Submit Outline Solutions (ISOS); Invitation to Submit Detailed Solutions (ISDS); and Call for Final Tender (CFT); independent expert technical, legal and financial advisers assessed the solutions that were submitted against the evaluation criteria. The Project Team then held moderation sessions to provide challenge and scrutiny to these assessments. These moderation sessions were attended by the WIDP transactor to ensure compliance with their conditions. The Project Board then received recommendations from the Project Director on the outcome of each evaluation stage and approved the short listing.
50. Ten companies or consortia were invited to submit 'outline solutions' (of the original 12, one withdrew and two others combined). A total of 17 solutions were submitted in December 2007. The participants were free to propose the technology and site(s) they considered most appropriate to meet the waste management needs of North Yorkshire and the City of York.
51. By the end of the ISOS stage of the procurement both Councils were fully satisfied that they had been able to secure 'outline solutions' that in general were in line with the contract requirements and were considered both robust and affordable. This stage of the procurement identified suitable participants to engage with in further dialogue to develop detailed solutions.
52. On 29 January 2008, a shortlist of four consortia was invited to submit detailed solutions (ISDS). On 1 September 2008, following assessment against the same evaluation criteria as at the ISOS stage, the final two participants were invited into further dialogue to develop their solutions towards final tenders.
53. In March 2009, the Councils introduced a draft Call for Final Tender (CFT) stage. There was no formal evaluation at this stage, but bids were submitted and reviewed to ensure they were broadly deliverable, affordable and acceptable in terms of risk profile. Further dialogue after this stage enabled the Councils to achieve a better bid position and level of risk transfer with both bidders whilst there was still a competitive tension.
54. The Call for Final Tender in September 2009 marked the close of dialogue with bidders. Prior to close of the competitive dialogue, WIDP

undertook a commercial review of the project against their Commercial Close Conditions and concluded that dialogue could be closed. As part of the commercial review all documentation was reviewed for consistency against their standard. It was concluded that there were no unusual derogations from the HM Treasury's Standardisation of PFI Contracts Version 4 requirements and the risk positions were acceptable.

55. In Autumn 2009 the two final tenders were evaluated and at Project Board on the 17 December 2009, the Corporate Director of Business and Environmental Services (NYCC) endorsed AmeyCespa becoming the selected partners they had scored highest against the evaluation criteria. The evaluation scores are a matter of fact and commercially confidential, and their precise detail is not directly relevant to the decision now being considered by Members whether or not to award the proposed contract. However, copies of the evaluation reports submitted to the Project Board are available for inspection by Members on request as confidential background documents to this report.
56. As a condition of the Treasury Project Review Group's approval of the award of the PFI credits in July 2007, there was a stipulation that the project would need to go through a 2nd stage review of affordability prior to the Preferred Bidder being confirmed and announced. This 2nd stage review was successfully signed off by WIDP in June 2010.
57. A Technical Summary of all the proposals submitted at each stage of the procurement process is included as **Appendix 6**.

Procurement outcome

58. The AmeyCespa proposal has been identified, using objective criteria, as the most economically advantageous tender. That is the tender best meeting the Council's needs when assessed using the agreed criteria. In accordance with the Public Contracts Regulations 2006 Members can now only consider whether to award the contract to AmeyCespa, or not.
59. In most PFI projects other than waste, the interval between the identification of the Preferred Bidder and that contractor obtaining planning permission is relatively short and it is common for the contracting authority to have previously obtained outline permission for new facilities. Once planning permission is secured there follows a three month interval and the contract then reaches financial close.
60. In the case of long term waste contracts the situation is not so straightforward. Firstly, outline planning permission is not available in the case of waste treatment sites; and secondly determination of a planning application for a waste facility can take considerably longer than in other developments.

61. The proposed solution has therefore been procured under a 'split' Commercial / Financial close arrangement, which reduces the financial risks that the Councils are exposed to should the planning application be unsuccessful. Should the County Council award the proposed contract to AmeyCespa then the Project Agreement will be signed and this will mark Commercial Close. Financial close will not take place until planning permission is granted, at which point a set of agreements between AmeyCespa and funders relating to the funding package will be executed. Further detail on the consequences of a split commercial / financial close is provided in the risk section of the report.

Pre-Preferred Bidder Final Business Case

62. WIDP required that a Final Business Case (FBC) (see **Appendix 1** Background Documents) was completed and approved prior to announcing the Preferred Bidder. The purpose of the Pre-Preferred Bidder FBC is to provide sufficient supporting evidence to demonstrate that the solution proposed by AmeyCespa is viable, affordable and in line with the previously approved Outline Business Case. A copy of the Defra FBC approval letter is included as **Appendix 7**.
63. As a result of the Council's decision to opt for a 'split' Commercial / Financial close WIDP imposed 11 conditions which must be satisfied prior to Commercial Close (see **Appendix 7**). These conditions can only be satisfied fully after contract documents and supporting ancillary agreements are completed. However, there are no known issues which will prevent WIDP from being able to confirm that these conditions have been satisfied at that time.

County Council Members' Working Group

64. On 27 July 2010, the County Council Executive resolved that a Members' Waste PFI Working Group be established in order to conduct a due diligence check on the Council's Waste PFI project. The Working Group worked to an agreed set of Terms of Reference as follows :
- “to review the PFI procurement process and proposed contract and advise the Executive accordingly whether
- (a) the procurement process carried out was appropriate, lawful and in accordance with the Council constitution and procurement rules
 - (b) the commercial terms proposed in the contract represent value for money for the Council
 - (c) the share of risk reflected in the contract is acceptable and equitable between the Contractor and the Council
 - (d) appropriate arrangements have been agreed as between the City of York Council and NYCC regarding the allocation of cost and risk arising from (b) and (c) above
 - (e) the evidence/advice taken into account during the process was contemporary and comprehensive.”

65. The Working Group comprised County Councillor Keith Barnes as Chairman of the Working Group, County Councillors Roger Harrison-Topham and Patrick Mulligan, and Mr David Portlock, an independent Member of the Audit Committee. The supporting officer to the Working Group was the Corporate Director, Finance and Central Services at NYCC.
66. The Working Group held a number of meetings between the 12 August 2010 and 11 November 2010 to gather evidence for their report. They had sessions with key members of the Project Team and Advisers and also invited County Councillors to meet the Working Group to discuss key issues / concerns.
67. The key conclusions of the working panel were for each of the above bullet points
 - a) Nothing has come to the notice of the Working Group that would suggest that the procurement process was other than lawful and in accordance with the NYCC constitution and procurement rules.
 - b) On balance, the Working Group believes that the commercial terms proposed in the contract represent value for money for the Council
 - c) the Working Group believes that the share of risk reflected in the contract is acceptable, provided that planning consents do not involve onerous restrictions on the sourcing or the type of waste
 - d) The Working Group considers that the decision to work together with the city of York has brought important benefits to both councils
 - e) nothing has come to the attention of the Working Group that would suggest that evidence and advice taken into account during the process was other than contemporary and comprehensive
68. The full report is available to Members as a background document.

The Proposed Solution

Technology description and location

69. The proposed service includes the design, construction and operation of an integrated waste management facility which will receive, accept and treat waste. The facility will be located, subject to planning consent, on the site of the existing Allerton aggregates quarry and landfill and be known as the Allerton Waste Recovery Park.
70. Principally the service will receive residual collected household waste, residual waste from Household Waste Recycling Centres (HWRCs) and an element of commercial waste which will be similar in nature to household residual waste.

71. The proposed facility is designed to be a self-contained unit that provides the full service on a single site. The facility will treat waste through a series of materials recycling, anaerobic digestion and thermal treatment processes to fulfil the Councils' requirements for recycling, and landfill diversion.
72. The proposed solution is Mechanical Biological Treatment (MBT) with front end separation of metals, plastics and paper; separation and treatment of the organic fraction through Anaerobic Digestion (AD); and treatment using Energy from Waste (EfW) incineration for the remainder.

Mechanical Treatment Plant (MT plant)

73. The MT plant is a twin stream plant with a maximum design capacity of 408,000 tonnes per annum (tpa) though typically the plant will process 264,000 tpa. The plant separates plastics, metals, paper and cardboard, and organic fractions.
74. Recycled plastics, metals, paper and cardboard are sent to markets and the organic fraction is passed through to the Anaerobic Digestion plant. The residual fractions coming from the MT are sent to the Energy from Waste plant for incineration.

Anaerobic Digestion (AD) Plant

75. The AD plant has a design capacity of 40,000 tpa and will treat the organic fraction of waste coming from the MT plant. The process will produce a biogas (a mixture of methane and other gasses) that will be combusted directly in two dedicated engines. This will generate renewable electricity for direct sale to the National Grid.
76. The digestate coming from the AD plant will be mixed with the MT plant residual fraction and sent to the EfW plant for incineration.

Energy from Waste Plant

77. The EfW maximum design capacity is 320,000 tpa although it will typically treat about 305,000 tpa. The plant has been sized to meet the needs of the Councils, but where the Councils don't deliver waste to the full capacity of the plant, commercial waste will be used to top up. The inputs to the EfW come from the MT and AD plants, from the direct delivery of HWRC wastes, and from other third party wastes.
78. The EfW plant has been designed as an energy recovery plant, fulfilling the requirements for classification as a recovery facility under the Waste Framework Directive. The plant will produce electricity (which will be exported and sold to the National Grid), an inert bottom ash material (that will be sold as aggregate for use in highway construction), and an Air Pollution Control residue (APC waste) which will be sent to a hazardous waste facility.

Air pollution control technology

79. The facility will require an Environmental Permit to operate from the Environment Agency (EA), which will ensure that the emissions are being effectively managed well within the legal limits. Energy from Waste plants are subject to strict monitoring by the EA and if the plant failed to meet these criteria the operating permit could be withdrawn.
80. The air pollution control system proposed by AmeyCespa is in accordance with established practice at comparable EfW facilities in the UK. It can be viewed as a current state-of-the-art approach, and the overall concept is proven for use at comparable facilities. As part of the Environmental Permitting process (regulated by the Environment Agency), AmeyCespa will need to demonstrate that this technique represents the Best Available Technique (BAT) for the proposed development.
81. The basis of the design and operation of the proposed air pollution control process is to achieve compliance with the Waste Incineration Directive limits. This represents a minimum standard. AmeyCespa has also left open the opportunity to further reduce emissions if this should become necessary in the future, in response to tightening legislation or local environmental constraints. At an appropriate stage (e.g. planning application or Environmental Permit application), AmeyCespa should provide an assessment of BAT for control of emissions to air, which considers the potential costs and benefits of reducing emissions to levels below those specified in the Waste Incineration Directive.

Location

82. A location plan and aerial photograph of the proposed site are included as **Appendix 8 (a) and (b)**. AmeyCespa selected Allerton aggregates quarry and landfill as the best available site predominantly because of its location close to the largest areas of population where most waste is produced and strategic transport links. AmeyCespa will be required to include a full site selection audit trail as part of their planning application.
83. It is separately proposed that there will be a series of waste transfer stations (WTS's) provided by the County Council and City of York Council to serve each district / borough council area, which will receive waste following collection and bulk it up for efficient transfer to Allerton Park. The Allerton Waste Recovery Park will negate the need for a separate WTS in Harrogate Borough. The WTS's will become operational in conjunction with, but separate to, the facility at Allerton Park.

Performance

84. AmeyCespa commits to accept all residual waste from the Councils, regardless of composition, with no disruption to the service under any scenario.
85. AmeyCespa has committed to the following minimum performance levels:
 - Recycle a minimum 5% of contract waste
 - Divert a minimum 90% of contract waste from landfill
 - Divert a minimum 95% of biodegradable municipal waste in contract waste from landfill
86. The proposed solution will improve recycling rates and enable the York and North Yorkshire Waste Partnership to achieve its 2020 recycling target at least 5 years ahead of schedule. Whilst AmeyCespa commit to recycle a minimum 5% of waste delivered to them by the Councils, they anticipate that they will be able to recycle close to 10%. AmeyCespa will use local markets for the recycling of ferrous metal, non ferrous metal and plastic material wherever possible.

Environmental benefits

87. The Waste and Resources Assessment Tool for the Environment (WRATE) is the Environment Agency's approved tool for evaluating the environmental aspects of waste management activities. WRATE has been used in this procurement to evaluate the potential CO2 saving of the solution.
88. For evaluation purposes the year used is 2019/20. The proposed solution is shown to offer a carbon offset of circa 10 million kg CO2 eq. in 2019/20, while the same amount of waste sent to landfill would produce a burden of circa 49 million kg CO2 eq. There is therefore a benefit from the proposed solution of circa 59 million kg CO2 eq. per annum in comparison with landfill. Using the Defra/ DECC Greenhouse Gas Conversion Factors (2010) this is equal to the emissions of over 140 million miles in an average car. Assuming the average car travels 12 thousand miles per annum, this is equivalent to the annual usage of almost 12 thousand average cars.

Strategic fit

89. The proposed solution fits well with European Union, national and local strategies in a number of ways.
90. The National Waste Strategy identifies a key objective as: "Using PFI to encourage a variety of energy recovery technologies (including anaerobic digestion) so that unavoidable residual waste is treated in the way which provides the greatest benefits to energy policy. Recovering energy from waste (EfW) which cannot sensibly be

recycled is an essential component of a well-balanced energy policy” (Waste Strategy for England, 2007, page 15).

91. The National Waste Strategy also states that: “Evidence from neighbouring countries, where very high rates of recycling and energy from waste are able to coexist, demonstrates that a vigorous energy from waste policy is compatible with high recycling rates” (Waste Strategy for England, 2007, page 78).
92. The Waste Framework Directive (WFD) provides an updated waste hierarchy that allows Energy from Waste to be included as part of ‘recovery’. Energy from waste facilities which meet the necessary criteria, including the proposed Allerton Waste Recovery Park, are classed as ‘recovery’ rather than ‘disposal’ operations and can therefore be placed in a higher position in the waste hierarchy. Legislation to implement the WFD will be in place in England and Wales by late 2010 and will require the waste hierarchy to be applied as a priority order in waste prevention and management legislation and policy.
93. The Renewables Directive has a target to deliver 20% of all Europe’s final energy demand from renewable sources by 2020. The UK’s share of this target is 15% renewable energy by 2020, which compares to current levels of around 1.5%. The Renewable Energy Strategy outlines the ways the UK could increase the uptake of renewable energy to meet this target including:
 - Discouraging landfill of biomass as far as is practical, thereby maximising its availability as a renewable fuel.
 - Encouraging Waste Incineration Directive compliant infrastructure and support for anaerobic digestion as a means of generating energy from waste.
94. The Let’s Talk Less Rubbish Strategy states that: “The Partnership expects that in accordance with the Best Practicable Environmental Option outcomes, residual waste will be treated by a combination of either or both Mechanical Biological Treatment and/or Energy from Waste incineration processes” (Let’s Talk Less Rubbish, 2006-2026, page 22).

Contract Overview

Standardisation of PFI Contracts

95. PFI and similar type contracts have traditionally had a highly regulated structure. In certain circumstances, including this case, there is a requirement to adopt drafting issued by an agency of HM Treasury. The current required drafting is set out in version 4 of Standardisation of PFI Contracts (“SoPC4”) and it is intended to ensure that neither party to the contract bears any unreasonable amount of risk. In addition, waste PFI contracts are expected to follow a form of contract that has been specifically adapted from SoPC4 by WIDP.

96. As described earlier in this report, the proposed contract has been procured using the competitive dialogue procedure. At an early stage in the procedure, a draft contract was tabled by the Council, and during the course of the dialogue with tenderers the final form of the contract was negotiated.
97. Where negotiations involved a proposed divergence from the required wording of the WIDP Contract, WIDP's consent to the derogation was required. Where the negotiations resulted in a divergence from the wording required by SoPC4, Treasury's consent to the derogation was required.
98. All commercial negotiations have now been completed and final drafting of the contract is taking place. Regulation 43 of the Public Contracts Regulations 2006 impose a duty of confidentiality on the Councils. Commercially sensitive positions negotiated by the Councils that might hamper AmeyCespa's ability to negotiate deals elsewhere cannot be divulged. However, the latest draft of the proposed contract is available for inspection by Members on request as a confidential background document to this report.

Contract Structure

99. The Waste PFI Contract imposes four basic obligations on the Contractor (to design, build, finance and operate the proposed facility) and two obligations on the Council (to supply waste and to pay the Contractor for treating that waste). Each of those six obligations is considered below.
 1. The Contractor's obligation to design
100. There are two aspects to this obligation: planning and permitting.
101. The Contractor has to design the facility in such a way as to facilitate the award of planning permission. The consequences of failing to do so are a risk for the Contractor. Under the Contract, all other obligations (i.e. build, finance and operate) are suspended until the Contractor has obtained a satisfactory planning permission. If, despite having used its reasonable efforts to do so, the Contractor is not able to achieve a satisfactory planning permission, then the Contractor and the Councils will work together to try and identify what changes could result in a satisfactory planning permission. If no such changes can be identified or agreed the Contractor is entitled to withdraw from the Contract and to receive a partial reimbursement of its costs.
102. The Contractor has to design the facility to sufficiently high technical standards that it can satisfy the Environment Agency that the facility and its method of operating do not pose an environmental risk. The contractor must obtain a permit from the EA to operate the plant.

103. The Contractor has to design the facility so that it can meet or exceed the Councils' requirements. In general terms, those requirements are to assist the Councils in achieving the strategy set out in Let's Talk Less Rubbish, but, in particular they are to deliver the committed minimum performance levels.
104. Failure on the part of the Contractor to meet or exceed those requirements will result in the Council withholding payment and, in a serious case would give the Councils the right to (as an interim measure) require the Contractor to dismiss individual members of staff and/or sub-contractors responsible for non-performance, and in an extreme case would give the Councils the right to terminate the contract.

2. The Contractor's obligation to build

105. Having achieved the planning permission, the Contractor has to build the facility. When built the facility must be fit for purpose and must continue to be so for at least the following 25 years. If there are any design failures or if the facility is poorly built and the required level of service is not delivered, the Councils have no obligation to contribute to the cost of repairs and would be entitled to withhold payment, require dismissal and in extreme cases, to terminate the Contract. The facility is expected to take three years to build and commission. If the Contractor takes significantly longer to build the facility, the Councils have the right to terminate the Contract. If the Contractor encounters problems that result in cost overruns, the Councils are under no obligation to increase the amount paid.
106. During the build period the Contractor is to carry insurance as required under SoPC4; for example to protect against a delay in commissioning or damage to the works.

3. The Contractor's obligation to finance

107. The provision of finance by the Contractor is at the heart of PFI and historically, there has been a ready pool of willing lenders for PFI projects. The economic environment over the past few years has seen a change with a smaller number of lenders each wishing to lend smaller amounts at higher margins. Certainly, conditions in the banking market are better than they were, but there is no way of knowing what conditions will be like in the future. At the height of the banking crisis, the Treasury issued an amendment to SoPC4 which is incorporated in the Waste PFI Contract. The amendment states that, if after the Contractor has borrowed at a high rate of interest, rates subsequently fall, the Councils may compel the Contractor to refinance at the lower rates and up to 75% of the resulting savings are to be paid to the Councils.
108. Delays in financing associated with poor market conditions are a risk to the Councils as the capital cost of the project would continue to be

indexed during the period of delay. The Council has a right to terminate to protect itself from such cost over-runs that causes the project to be unaffordable. If that right were exercised, compensation would be payable to the Contractor. The Council has been able to negotiate a favourable position in respect of the compensation and the Contractor would, in effect, be heavily penalised financially if the Councils were to terminate.

4. The Contractor's obligation to operate

109. It is during the operating phase that the Contractor discharges its principal obligation – the diversion of waste from landfill. Whatever waste the Councils deliver (with very limited exceptions in respect of deliveries of waste that ought not be in the waste stream, for example waste contaminated by radiation) must be accepted and treated by the Contractor. No matter what quantities of recyclables have been removed from the waste before delivery to the facility, the Contractor has to recycle a further 5% by weight. Cost overruns in the operation of the plant are a risk for the Contractor and if the Contractor makes excess profits through sale of any spare capacity, those are to be shared with the Councils.
110. The Contractor's performance is monitored through a number of key performance indicators, poor performance against which can result in payment deductions, the dismissal of individuals or sub-contractors responsible for poor performance and, in extreme cases, termination by the Council of the Contract.
111. At all times, the Contractor has to comply with the requirements of the planning permission, the permit issued by the Environment Agency (as regulator) and all other relevant legislation, and also keep in force quality, environmental and health and safety accreditation.
112. During the operating period, the Contractor is required to carry insurance as required by SoPC4; for example to provide the ability to continue to service its debt during an outage or to repair any structural damage during the operating period.
113. At the end of the contract period the Contractor must hand back the facility to the Councils free of charge and it must be capable of being operated for a further five years. Before the end of the operating period, the County Council and the contractor have the ability to agree a five year extension of the contract.
114. Throughout the operating period the relationship between the Councils and the Contractor will be subject to a partnering regime designed, as far as practicable, to ensure a non antagonistic and mutually beneficial approach to the contract. This will be particularly necessary when responding to the anticipated environmental and societal changes and the associated impact on the composition of the waste collected in York and North Yorkshire during the life of the Contract.

5. The Councils' obligation to supply waste

115. The Councils have to provide sufficient waste to enable the facility to operate. The Councils have provided the Contractor with projected future residual waste arisings (ie excludes recyclates and green waste). The Councils have not accepted liability for the accuracy of those projections but they have accepted the obligation to deliver at least 80% by weight of those projected tonnages. Failure to deliver to that 80% level would result in the Councils having to pay for that waste as if it had been delivered. Future waste projections, plant capacity and guaranteed minimum tonnages are detailed in the Common Themes / Key Issues section of the report (paragraphs 144-162).
116. The risk that the projections are wrong is subject to a number of mitigants. First, the projections themselves are based on sound evidence and the best available information drawing on data from the Office of National Statistics and the Department for Communities and Local Government (DCLG). Second, there are very few constraints on the types of waste that the Councils may deliver (this position contrasts very favourably with other waste contracts which, generally, require waste to fall within a tightly defined calorific value). Third, there is currently a strong link between economic activity and waste volumes. Fourth, the Contractor is under a duty to attempt to procure substitute waste (for example from shops, restaurants or offices). The Contractor has undertaken surveys and has satisfied itself, the Councils and the funders that there are adequate supplies of such waste available in the York and North Yorkshire area to further manage this risk.

6. The Councils' obligation to pay for the treatment of waste

117. Provided the Contractor accepts and treats waste and diverts / recycles to the levels it has contracted, it is paid a fee for doing so. If it fails in any aspect, the fee payable is reduced. The fee is largely composed of a fixed price and it is indexed by reference to RPIx (measure of inflation) and not by reference to for example material costs to the Contractor.

The role of the funders

118. The essence of PFI is that the private sector party is responsible for borrowing the funding needed and accordingly, whilst not a party to the Waste PFI Contract directly, there is a need for formal engagement between the funders and the Councils.
119. SoPC4 is designed to ensure a balance between the risks shouldered by the public sector, the private sector and the funders. The overriding principle is that risk is best borne by the party best able to bear it.
120. As well as entering into the Contract, the Council will enter into an agreement with the funders (the Funders Direct Agreement). Under

the Funders Direct Agreement, the Council will agree that it will not exercise its right to terminate the Contract without first giving the funders the opportunity to 'step-in' with a view to resolving whatever shortcoming gave rise to the potential termination. This provides the Councils with comfort that the funders are generally better positioned to 'step-in' than the Council might be and are also better able to fund any changes required as a result of the Contractor's failure.

121. Funders carry out detailed due diligence into any proposed contract. Whilst the Councils may not rely on this due diligence exercise (instead relying on the evaluation process detailed earlier in the report), they may draw comfort from the fact that, having carried out its due diligence, a funder is prepared to lend.

Parent Company Guarantee

122. A parent company guarantee (PCG) is an arrangement under which the parent company stands behind undertakings made by a company established to carry out a contract. In the case of PFI contracts, PCGs are not normally given to public sector employers because the parent company is deemed to have invested enough capital to incentivise them to support their subsidiary. SoPC 4 states: "A limited recourse structure is typically used in PFI projects as it isolates and limits the liabilities of the Project from those of the shareholders. Consequently, the obtaining of direct guarantees by the Authority is not normally appropriate. The Authority should generally not insist on receiving guarantees from the parent companies of a Sub-Contractor or the Contractor's shareholders in respect of the obligations of the Contractor."
123. In practice, PCG's have limited use in PFI transactions because, under the terms of the agreement between the County Council and the Funders (the Funders' Direct Agreement), the Council will agree not to exercise any security right until the debt to the Funder has been paid. The fact that there is not a PCG in place is therefore not considered to put the Councils in a disadvantageous position.

Conclusion of Legal Advisors

124. The Council's legal advisors, Watson Burton have advised that they have considered the form of the proposed Waste PFI Contract and the apportionment of risks contained in that contract. Their conclusion is based on the draft of the Contract as at 5th November 2010. It is their view that, when taking into account the requirements of SoPC4, the risk apportionments contained in the WIDP Contract and the constraints imposed on the Councils by the requirements of the Public Contracts Regulations 2006, the risks contained in the proposed Contract represent a balance that is in favour of the Councils. Furthermore, the positions presently negotiated by the Councils and agreed to by AmeyCespa represent a balance of risks that is significantly more in

favour of the Councils than would have been the case had the Council simply adopted in full the terms set out in the WIDP Contract.

Waste Management Agreement with City of York Council

125. The County Council will enter into the Waste Management Agreement with City of York Council at the same time as entering into the contract with AmeyCespa.
126. At present, the proportion of waste arising in North Yorkshire and the City of York is approximately at a ratio of 79:21. For simplicity, the Waste Management Agreement assumes that all payments from the two Councils to the Contractor will be shared in these proportions. At the end of each year, actual tonnages will be known and reconciliation can take place. Discussions are continuing on the best mechanism for ensuring that both Councils get the appropriate credit for the diversion achieved as well as for any associated costs or benefits (e.g. Landfill Allowance Trading Scheme). The starting point for those discussions is that the 79:21 split will apply except where it would not be equitable. The Chief Financial Officers of the two Councils will identify mechanisms for apportioning risks that can presently be foreseen. The Waste Management Agreement incorporates a partnering regime that will provide protection to both Councils when facing unforeseen issues. Under the agreement each authority will be obliged to contribute funds to the level of the agreed budgetary provision for the contract.

Novation Agreement at Contract Close

127. At financial close a number of documents will need to be executed. Principally these will be agreements between AmeyCespa and funders relating to the funding package, but there will be two new agreements to be executed by the County Council; a Deed of Novation and the Funders Direct Agreement. Funders in PFI transactions will not lend to a company that has been trading for any period of time; they prefer to lend to a new (or "clean") company. That is the reason why the Waste PFI contract will be signed at commercial close by an "interim" company. At financial close the Waste PFI contract will be novated with the result that from financial close onwards the person with whom the County Council is in contract will be the special purpose vehicle established by AmeyCespa to act as the contractor for the term of the contract. The Deed of Novation "novates" the Waste PFI contract and allows any necessary amendments to be made. The result is technically a "new contract" although one that (except for any amendments that might be made) is in the same terms as the original contract. In effect this will be a new contract between the Council and the special purpose vehicle (SPV) who replace the interim company.

Consultation

128. The principal requirement for consultation in relation to the project was at the formulative stage of strategy development. The consultation undertaken at that time is set out below. The current decision to be taken in relation to the outcome of the procurement process is the implementation of the strategy. Nevertheless, the Councils identified a need to make the public and stakeholders aware of the proposed solution and seek views prior to final determination of award of the contract.

Development of Let's Talk Less Rubbish strategy

129. In revising the original York and North Yorkshire Joint Municipal Waste Management Strategy (Let's Talk Rubbish) extensive consultation was undertaken during 2005/06. The detail of this consultation is included in the Draft Waste Strategy Consultation Report (see **Appendix 1** Background Documents)
130. The consultation involved focus groups and 'stakeholder dialogue' to help inform the draft strategy followed by widespread public consultation on the draft strategy itself. The consultation exercise concluded that there was no clear preference on the option to treat residual waste. This is reflected in the revised version of the strategy Let's Talk Less Rubbish adopted in July 2006.

Preferred Bidder announcement

131. The name of the Preferred Bidder for the Waste PFI contract and details of AmeyCespa's proposal were announced to the media on 29 June 2010. Detailed information about the proposed solution was provided to a number of key stakeholders including:
- Members of North Yorkshire County Council
 - Members of the City of York Council
 - MPs
 - MEPs
 - Parish Councils
 - District Council Chief Executives
 - Environment Agency
 - English Heritage
 - Highways Agency
 - Campaign to Protect Rural England
 - Harrogate Friends of the Earth
 - Don't Incinerate Steering Committee (now part of North Yorkshire Waste Action Group)
132. Members of City of York Council have also had the opportunity to attend a number of briefing sessions from officers throughout the

project, including a joint presentation with AmeyCespa on 15 July 2010.

133. Presentations have been made to all North Yorkshire County Council Area Committees and a summary of the issues raised is attached as **Appendix 12** to this report (note these are not formally agreed minutes). Letters promoting the presentations were sent to all County Councillors, Area Committee co-opted members, Parish Council Clerks and Parish Councillors. The meeting details were available on the County Council website and in the September addition of NY Times. The presentation was held prior to the normal meeting session to enable questions from the public without prior notice.
134. Parish councils closest to the proposed facility were invited to a presentation and discussion on key issues. Two further meetings have been held with representatives from Marton cum Grafton Parish Council to discuss the assumptions made by the Councils on projected recycling, housing growth and waste tonnage figures.
135. There has been extensive publicity for the proposal in the printed media, both independently and in the NY Times, in the broadcast media and on the County Council, City of York Council and York and North Yorkshire Waste Partnership websites. This has raised awareness of the project among residents of York and North Yorkshire.
136. As part of their pre-planning application public information campaign AmeyCespa have independently held exhibitions on the proposal in the locality of the proposed Allerton Waste Recovery Park, at various other locations across the county and in York city centre. AmeyCespa have also initiated the Community Liaison Group (CLG) for local residents, which now has 19 registered members. The Group is independently facilitated and made up of representatives of the local community and its format allows for detailed discussion of key issues.
137. Presentations have been made by Council officers to local interest groups, including the Institution of Civil Engineers (Yorkshire and Humber), Harrogate Action for the Environment, Scarborough Sustainability Group, the AmeyCespa Community Liaison Group, the Council for the Protection of Rural England - Hambleton (CPRE) and the Officer and Member Groups of the York and North Yorkshire Waste Partnership.
138. The Councils are aware of two petitions relating to the proposed solution. The first is a hard copy petition reported as containing over 5,000 signatures which was presented to 10 Downing Street on November 18 2010. The Councils have not had sight of this petition at the time of writing this report and the figure for signatories is that quoted by the petition organisers. The second is an on-line petition that at 14 November 2010 was understood to contain 1,951 signatures. This petition calls on the Councillors of North Yorkshire County Council and the City of York Council:

1. To listen to the community;
2. To vote against the proposed waste management plant at Allerton Park;
3. To urgently review their waste management strategy; and
4. Specifically to review in full a wider set of more innovative and sustainable solutions for the future that match current national policy, reflect up to date technology and the state of the economy by going beyond large-scale incineration, reflecting the views of the public of North Yorkshire today through full, open and responsive dialogue with the public, and safeguard the heritage of those who live and work in the county now and in the future.

Main concerns raised by respondents

139. An analysis of the views expressed to the Councils since the announcement of the Preferred Bidder is given below.

| Respondent | Number |
|--------------------------|---------------|
| Campaign Group | 9 |
| Commercial organisation | 6 |
| District Council Members | 4 |
| MP / MEP | 2 |
| Members of the Public | 118 |
| Parish/Town Council | 40 |
| Total | 179 |

140. A summary of all the comments / views received from these respondents is provided in **Appendix 13**.
141. Thirty three percent of respondents specifically recorded opposition, where as the remainder raised concerns and an implied criticism of the project. The most common concerns raised by respondents are detailed in the table below and addressed elsewhere in this report.

| Main concerns raised by the public | % of respondents commenting |
|--|------------------------------------|
| Higher levels / targets for reduction/reuse/recycling | 39% |
| Further information requested | 39% |
| Environmental pollution, traffic and health concerns | 37% |
| Cost / affordability | 37% |
| Alternative solutions suggested | 31% |
| Criticism of communication | 25% |
| Should review solution/ question need for the proposed solution | 25% |
| Site selection and centralisation of solution | 21% |
| No consultation / ignores current opinion and relies on out of date consultation | 19% |

142. In addition to general responses to the announcement of preferred bidder the Councils are aware of detailed representations and reports from a number of special interest groups opposing the project. Detailed reports have been prepared by:
- York Environment Forum
 - York Residents Against Incineration
 - Marton cum Grafton Parish Council
 - Friends of Allerton Castle
 - Harrogate Friends of the Earth
143. Many of the concerns raised by respondents relate to suitability of the proposed location and/or the technology at this location. These are issues which will be considered fully as part of the planning process. However, where appropriate comments are provided in the section below.

Common Themes/Key Issues

Waste flows and plant capacity

144. A common concern raised by a number of respondents is the future need for the proposed waste treatment plant against a background of increasing recycling and recent reductions in overall waste volumes.
145. **Appendix 14** details how future waste volumes have been forecast and compares the plant capacity and future requirement against the proposed guaranteed minimum tonnage under the contract. Various sensitivities are also explored where key assumptions are varied to test the robustness of forecasts under different scenarios. These include changes to underlying growth predictions and recycling performance.
146. Predicted future waste volumes are based on the key assumption that increases will be driven by predicted growth in the number of households in the area with the following adjustments:
- The amount produced per household would reduce annually by a notional 0.25% to recognise the aspiration for waste prevention (equivalent to a compound reduction of approximately 7.4% over the period).
 - Amounts of commercial waste collected by district and borough councils would remain constant throughout the period.
 - Recycling and composting would increase broadly according to district and borough council projections to a combined performance level of 48% in 2013/14.
 - The effect of the economic downturn would result in reduced waste volumes for the first years of the model.
 - Household and commercial waste delivered to household waste recycling centres (HWRCs) would reduce in the first years of the model as a consequence of revised operating policies.
147. Waste flow projections at the time of Call for Final Tenders (CFT) for the proposed contract estimated that the amount of residual waste

requiring treatment by the contractor would increase to approximately 298,000 tonnes per annum (tpa) in 2039/40. This was within the lower range of forecasts in the Regional Waste Strategy and less than forecast population growth for the same period.

148. AmeyCespa have proposed to build a waste treatment plant to treat 305,000 tpa of residual waste, with a requirement for a guaranteed minimum tonnage (GMT) equivalent to 80% of residual waste forecast at Call for Final Tenders (CFT). At the time of final tenders, the waste from York and North Yorkshire was predicted to account for between 61% of the provided capacity in year one, to 98% in year twenty five. The remaining capacity is to be filled using locally available commercial waste.
149. Waste volume forecasts are updated regularly to take account of changes to waste collection practices, baseline performance and other impacts. Changes that may have an effect on future waste forecasts since the Call for Final Tenders include:
 - Deeper and more prolonged economic recession than first envisaged.
 - Externalisation of collection arrangements by Hambleton and Richmondshire District Councils.
 - Repeal of Regional Spatial Strategies and local determination of future housing numbers.
 - Revised Office of National Statistics (ONS) population forecasts.
150. The potential impact and sensitivity of waste forecasts to these issues is discussed in detail in **Appendix 14** and summarised below.
151. The combined impact of rebasing forecasts to take account of the continuing recession and removing trade waste from future projections for Hambleton and Richmondshire District Councils is to reduce projected contract waste in 2039/40 from approximately 298,000 tonnes at CFT to 278,000 tonnes. Projected contract waste under this scenario is approximately 116% of GMT for all years of the contract.
152. The Office of National Statistics published revised population forecasts in 2009 which show a reduction in population forecasts for York and North Yorkshire compared to previous projections. Residual waste projected on the basis of updated population forecasts would be some 12,000 tpa less in 2039/40 than projected using previous population forecasts.
153. The level of this difference is not considered sufficient alone to question the validity of continuing to project waste growth on the basis of housing forecasts, and forecast residual waste growth from 2009/10 to 2039/40 remains lower than growth in both housing and population forecasts.
154. However, the impact of combining rebased projections, removing trade waste from Hambleton and Richmondshire Districts and then projecting

growth on the basis of future population forecasts is to reduce predicted residual waste arisings for 2039/40 from 298,000 tonnes to 248,000 tonnes. Forecast contract waste under this scenario varies from 113% of GMT in the first year of the contract to 104% in the final year. However, a projection on this basis ignores the potential for increasing trade waste collections from other Waste Collection Authorities and the trend towards lower household occupancy and therefore proportionally higher waste arisings per head.

155. It has been suggested that residual waste treatment capacity would be significantly reduced if the York and North Yorkshire Waste Partnership targeted higher recycling performance. Whilst there is some potential to improve recycling beyond the predicted levels (through improving capture rates or increasing targeted materials), the opportunity through traditional kerbside recycling is limited.
156. The impact of this stretch in recycling performance, if combined with the sensitivities of rebasing the model with growth based on revised population forecasts rather than housing projections, and reduced trade waste, would be to further reduce projected contract waste in 2039/40 to approximately 236,000 tonnes. However, forecast tonnages still exceed GMT in all but the final four years of the contract. The total tonnage below GMT in these final four years under this scenario is less than 5,000 tonnes.
157. It is important to note that there is no commitment or statutory obligation on the waste collection authorities within the County Council area to improve recycling performance beyond current levels. There is therefore a risk that planned improvements and/or further stretch performance beyond planned levels will not materialise and residual waste volumes may be higher than forecast.
158. Equally, commercial waste collected by district councils may increase with general economic growth in the sub region and as local authority prices become more competitive. A further sensitivity has been modelled where district council commercial waste (where still collected by the council) increases broadly in line with an assumed economic growth of 2.5% per annum. Combining increased commercial waste with the other sensitivities of increased recycling and household growth based on population forecasts results in approximately 257,000 tonnes of residual waste requiring treatment in 2039/40. This is equivalent to approximately 108% of GMT.
159. This scenario is no more or less realistic than the other sensitivities referred to above, but provides some balance to indicate the potential that waste arisings may increase beyond projected amounts as well as potentially decrease.
160. It has also been suggested that the separate collection of food waste will enable significant increases in recycling performance. The

argument is that this would divert food waste from landfill and significantly reduces the need for residual waste treatment capacity.

161. Food waste diverted through these means would count towards recycling under the current definition, provided the material is returned to land. A strategy including separate collection and processing of food waste in this way can therefore deliver higher recycling performance, although it offers no benefit compared to the proposed contract in terms of diversion from landfill. It also necessarily entails a separate collection mechanism for food waste to be introduced, with associated costs, and householders to participate in its use.
162. Analysis shows that the benefit of separate food waste collections rolled out across the area would be increased recycling performance, but amounts of food waste collected would not avoid the need for waste treatment of the remainder.

Health impacts

163. The National Waste Strategy states that: “Concern over health effects is most frequently cited in connection with incinerators” (as opposed to other waste treatment solutions). The strategy confirms that: “Research carried out to date shows no credible evidence of adverse health outcomes for those living near incinerators” (National Waste Strategy for England, 2007, page 77).
164. The Health Protection Agency state that: “While it is not possible to rule out adverse health effects from modern, well regulated municipal waste incinerators with complete certainty, any potential damage to the health of those living close-by is likely to be very small, if detectable. This view is based on detailed assessments of the effects of air pollutants on health and on the fact that modern and well managed municipal waste incinerators make only a very small contribution to local concentrations of air pollutants” (The Impact on Health of Emissions to Air from Municipal Waste Incinerators, Health Protection Agency 2010 – see **Appendix 1** Background Documents)
165. The Committee on Carcinogenicity of Chemicals in Food, Consumer Products and the Environment advise: “That any potential risk of cancer due to residency near to municipal waste incinerators is exceedingly low and probably not measurable by the most modern techniques” (The Impact on Health of Emissions to Air from Municipal Waste Incinerators, Health Protection Agency 2010).
166. The European Commission Directive 2000/76/EC on the Incineration of Waste sets out emission limits. This Directive sets the most stringent emissions controls for any type of thermal process regulated in the EU.
167. Fichtner Consulting Engineers have carried out assessments on behalf of AmeyCespa. Fichtner state that in terms of particulates, the small dust particles emitted from everyday uses such as transport, agriculture

and fires, the Allerton area is at present at 75% of the Air Quality Objective primarily due to both the A1M, local agriculture and quarry activities. In contrast the proposed Allerton Waste Recovery Park is predicted to contribute just 0.25%.

168. In addition, Fichtner state that the general area in the vicinity of the proposed site is at present at about 80% of the Air Quality Objective for nitrogen dioxide emission levels, mainly due again to the closeness of the A1 motorway. In comparison, the nitrogen dioxide levels from Allerton Waste Recovery Park are predicted to be a maximum 3.3% of the allowable level.
169. Furthermore, emissions dispersal modelling undertaken by Fichtner, based on the impact of using the worst case weather data from the Met Office, demonstrates that there is a limited dispersal area close to the proposed facility and that this dispersal area is well within European air quality limits. Particulate impact from the proposed facility will be undetectable beyond 1.5 km from the site.

Traffic, landscape and visual impact

170. The proposed site is already used as a quarry and landfill and it is expected that traffic flows to and from the site when the proposed facility is operational will be broadly similar to the current flows. Traffic movements into and out of the site will be subject to a full assessment and scrutiny as part of the planning application process. A comprehensive traffic management plan will be required to the satisfaction of the planning and highway authorities.
171. Whilst some of the existing movements associated with the landfill will remain, the quarry operation is planned to cease in 2011. Transport impacts will also be minimised by the use of local delivery points serving each district and borough council area which will bulk up the waste to provide the most cost effective and efficient transport arrangements.
172. The potential visual impact of the facility on the surrounding landscape has been identified as an environmental issue which may require mitigation through the planning process. AmeyCespa are continuing to work with various organisations including English Heritage and specialist landscape architects at both Harrogate Borough Council and the County Council to identify and develop mitigations to potential landscape and visual impacts of the proposed facility, prior to the submission of their planning application. Mitigation measures may include both on-site and off-site work.
173. At certain times the EFW will produce a visible plume of water vapour. A plume visibility assessment has been carried out by Fichtner Consulting Engineers on behalf of AmeyCespa. The assessment concluded that the plume would be visible for approximately 30 percent of the time (10% during daylight hours) with an average visible plume length of 40 metres. The likelihood of the plume being visible is

different depending on the time of day. There is a slightly higher likelihood in the morning (6.00 am to 10.00 am) and a slightly lower likelihood in the afternoon (2.00 pm to 6.00 pm). Over the year, the plume is likely to be rarely visible in summer (June to September) and most visible in January and February.

State Aid

174. It has been suggested that the award of the proposed contract to AmeyCespa would breach State Aid rules. Article 107 (1) of the Treaty on the Functioning of the European Union states: "Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."
175. Any question of whether or not there has been unlawful State Aid is decided by the European Commission. The Commission has considered the question of whether or not contracts like the proposed waste contract constitute unlawful State Aid in two cases: London Underground Public Private Partnership and Welsh Public Sector Network Scheme. In both cases, the Commission concluded that neither undertaking had received an economic advantage and as such did not constitute State Aid.
176. On the basis that AmeyCespa was selected following a procurement exercise in which it was evaluated as offering the most economically advantageous tender, it follows that the payments to AmeyCespa represent a market price and do not confer an economic advantage. The Councils legal advisors have therefore concluded that award of the proposed contract would not breach State Aid as prohibited by Article 107 (1) of the Treaty.

Validity of outcome

177. Some comments received since the announcement of the Preferred Bidder have questioned the validity of the outcome given the time that has elapsed since the adoption of the joint waste strategy Let's Talk Less Rubbish. There are a number of reasons why the proposed solution remains sound and appropriate:
 - The legislative framework at European Union and national level remains in place and has indeed been strengthened by the adoption of the National Waste Strategy in 2007.
 - The Coalition Government has given two approvals to proceed with the project at Final Business Case stage and post Comprehensive Spending Review 2010. On both occasions the Government has been confident in the ability of the project to deliver on their priorities.

- Waste forecasts have assessed the impact of the recession on waste flows and concluded that the proposed solution remains viable.
- The competitive dialogue procedure is lengthy, but sufficiently flexible, to ensure that the final tenders reflected the current situation.

Options and Analysis

178. From the outset of the process there has been thorough consideration of alternative solutions. The Councils have been technology and site neutral and the bidders were free to propose location(s) and technology which they felt were deliverable and would offer the best value solution to the Councils.
179. In January 2005 the final report on Assessment of the Best Practicable Environmental Option (BPEO) for Municipal Solid Waste Arising in North Yorkshire and City of York was published (**see Appendix 1 Background Documents**). BPEO is a strategic tool to help identify and assess the options available for managing waste. Various scenarios were assessed in a systematic and balanced way taking into account a wide range of environmental criteria, as well as financial costs and reliability of delivery. The BPEO provided an assessment of different options at the time and was an essential building block of the Councils' revised waste strategy Let's Talk Less Rubbish. However, the BPEO has not influenced the selection of a contractor or the solutions proposed throughout the procurement.
180. The Outline Business Case included an appraisal of options to help develop a Reference Project which encompassed the services associated with managing municipal waste. The Reference Project was a solution which satisfied the aims and objectives of Let's Talk Less Rubbish, rather than a specification for future delivery of the service and was not necessarily the solution which would be delivered by the procurement. The Reference Case infrastructure comprised a Mechanical Biological Treatment (MBT) facility and an energy from waste (EfW) facility.
181. The procurement process detailed earlier appraised all of the options put forward by participants (the Councils received 17 proposals at Invitation to Submit Outline Solution Stage) and resulted in AmeyCespa being judged to be the most economically advantageous tender.
182. The matter requiring decision now is for the Councils to consider whether to award the long term waste management service contract to AmeyCespa, or not.
183. Members are not able to consider alternative options whether tendered or not. At this point in time the Councils are also not considering the suitability of the proposed location and/or the technology at this

location. These issues will be considered through the planning approval process.

184. Responses to the announcement of the Preferred Bidder have included alternative solutions purporting to be cheaper and more sustainable than the proposed contract. The costs of these alternative solutions have not been verified or established through a competitive process and it is unclear what risks and guarantees would be associated with them. The costs of these solutions are not directly comparable to the proposed contract and should be disregarded.
185. In many cases the alternative solutions proposed are similar to the technologies proposed by the PFI contractor in the use of mechanical separation of recyclables and anaerobic or aerobic digestion of organic waste. The difference is that they propose the remaining residual waste is prepared as a fuel and combusted at a remote site. This would involve a further process to prepare a fuel suitable for use in a remote plant and additional haulage. It would be inherently less flexible than the proposed solution and would require arrangements with third party markets for the fuel. This would add additional cost, risk and environmental impacts.
186. The alternative solutions are therefore not relevant at this time, however if these alternative options had been proposed they would have been evaluated against the other bids on a like for like basis. It is only this type of competitive process that allows for direct comparisons. These alternative solutions are speculative and over simplify the process and risks the Councils would face.
187. Responses to the announcement of the Preferred Bidder have also queried whether the Councils considered the use of existing capacity available in or outside the area. The Councils placed no restrictions on tenderers about where proposed facilities should be located. Tenderers were open to propose existing facilities in or outside the County and City areas. Proposals to use existing facilities were put forward as part of the procurement, but they did not score as well as other bids against the evaluation criteria.
188. Should a decision be taken not to award the contract, there will be a number of likely consequences:
 - The current procurement exercise would be abandoned (note combined County Council and City of York Council project costs from 2005/06 to 2009/10 inclusive are £4.8 million). If only one authority does not recommend to award the contract, that authority would be responsible for the other parties procurement costs (£c3.6m in York's case) as well as any potential claims from bidders.
 - The loss of approved £65 million PFI credits.
 - The Council would be expected to clearly identify those

elements of the proposed solution that are not acceptable in order to enable officers to procure an alternative solution and/or review the waste strategy.

- There would be a delay of several years before another contract for residual waste management could be considered (note the current procurement exercise started in 2006).
- The risk of Landfill tax and LATS would be significantly greater.
- The ability of both Councils to attract competitive bids in any future procurement could be prejudiced. There would be significant reputational damage to both Councils and it is probable that a smaller number of contractors would take part in any future procurement making it more difficult to achieve value for money.
- There would be an impact on the delivery of the Councils' waste strategy Let's Talk Less Rubbish and potential need to review the strategy and identify different objectives. This is likely to take some considerable time given the strong and diverse opinions that may be presented following a refusal to award the proposed contract.

189. In summary it could take 1–3 years to develop a new waste strategy and up to a further 4 years to procure a new solution. Therefore there could be a 5-7 year delay before another contract could be considered and a potential 10 year delay before any infrastructure would be in place. Indicative costs of a 10 year delay in developing waste treatment infrastructure include a liability for the Councils to pay over £300million in landfill tax and a risk of a further £120million in LATS penalties over this period

Corporate Priorities

190. The long term waste contract will result in the council significantly reducing the amount of waste being sent to landfill supporting the Sustainable City. The proposal is considered value for money when compare to do nothing reducing the impact of future cost increases.

Implications

Financial

191. The financial assessment of the AmeyCespa bid contains confidential commercial information and is therefore provided in the separate **appendix 9**, not for publication. However the AmeyCespa costs form part of the costs of the overall waste strategy for NYCC and CYC. Therefore the following paragraphs explain the overall affordability of the waste strategy including the proposed PFI contract relative to the budget provision in the current Councils Medium Term Financial Strategy

Affordability

192. The City Council identified in the Medium Term Financial Forecast that additional budgets of £700k would be required from 2010/11 to 2014/15 in order to build up sufficient base budget to fund the PFI. This was based on information available at budget council February 2010. This additional budget would also be required to do minimum as Landfill Tax and LATS liabilities impact the waste budgets. The budgets below represent the overall budgets for the Waste Disposal Service including the additional budget provision and also assuming inflation of 2.5% per annum.
193. This budget has been the basis of comparison of the estimated costs for CYC and the overall waste strategy including the costs of the PFI contract using forecast waste volumes and the PFI credits. The impact in the early years is as follows:

| CYC Only | Total (29 years) £000 | 10/11 £000 | 11/12 £000 | 12/13 £000 | 13/14 £000 | 14/15 £000 | 15/16 £000 | 16/17 £000 |
|--------------------|--------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Cost including PFI | 276,438 | 5,197 | 5,658 | 6,719 | 7,030 | 8,370 | 8,856 | 8,943 |
| Current budget | 310,606 | 5,206 | 5,955 | 6,705 | 7,457 | 8,409 | 8,604 | 8,803 |
| Headroom | (34,168) | (9) | (297) | (14) | (427) | (39) | 252 | 140 |

194. It will be noted that, in 'nominal' terms, on the basis of the assumptions included the City Council can afford the overall waste strategy including the PFI contract.

Sensitivities

195. Costs are based on the key assumptions set out in **appendix 9a** (private appendix not for publication). As part of submitting the Final Business Case to WIDP for approval the Councils provided sensitivity analysis on changes in assumptions to ensure the PFI project continues to be affordable.
196. The Councils have identified that the key sensitivities in relation to affordability relate to the assumptions arising from the 'split close' approach, (ie interest rate movement, foreign exchange movement and delay in commencement) plus a combined sensitivity defined by WIDP.

| CYC only | 'Baseline' costs at final tender submission £'000 | Sensitivities Interest Rate Increase by 1.2% £'000 | Adverse Foreign Exchange €1 : £1 £'000 | 1 year delay, 10 yr historic index £'000 | Combined Sensitivity set by Councils * £'000 | Combined sensitivity required by WIDP ^A £'000 |
|--------------------|--|---|--|---|---|---|
| Cost including PFI | 276,438 | 293,645 | 287,539 | 283,329 | 293,349 | 296,223 |
| Current Budget | 310,606 | 310,606 | 310,606 | 310,606 | 310,606 | 310,606 |
| Headroom | (34,168) | (16,961) | (23,067) | (27,277) | (17,257) | (14,383) |

* Increased interest rate by 0.5%, Euro exchange rate €1.05: £1 delay and assuming 2.5% per annum increase in the indices used to inflate capital expenditure

^A Increased interest rate by 1% and a 2 year delay assuming 2.5% per annum increase in the indices used to inflate capital expenditure

a. The sensitivity analyses are included in **appendix 9b** in graphical form. The impact of recent programme changes align to the 1 year delay scenario in the table above.

b. Based on this sensitivity analysis the City Council is able to afford all of the scenarios modelled.

197. Members will be aware that whilst indicative increases in budgets would be required to fund the PFI (as well as do minimum), this has not been formally approved by Council. As part of the process if Members wish to enter the contract it will be necessary to formalise the approval.

198. In order to meet the anticipated costs of the procurement including the shortfalls in budget in early years and the likely impact of sensitivities it is recommended that above inflation increases of £750k per annum over the period 2011/12 to 2015/16 are set aside to build up the budget to fund the project. As is shown below this is less than would be required to fund long term costs of "do-minimum". It is not proposed that this should change the affordability level set out in the tables above.

199. It should also be noted that the affordability line will be flexed to exclude the impact of budget decisions within the Waste Disposal service that don't impact on the PFI contract.

Value for Money (VFM)

200. The City Council will only enter into the PFI project if it offers value for money, both compared to its own projected costs of the 'do minimum' position and other similar projects.
201. The 'do minimum' option is essentially continuing the current arrangements of disposing residual waste from grey bin collections and HWRC's at Harewood Whin with ongoing Landfill Tax and LATS liabilities.
202. A comparison of the costs of the waste strategy (including the PFI contract) with 'do minimum' using the assumptions set out above demonstrates that undertaking the PFI contract, within the overall waste strategy offers value for money.

| | NYCC £000 | CYC £000 | Total £000 |
|---|-----------------------|---------------------|-----------------------|
| Costs of Waste strategy inc PFI LATS Sales | 1,212,934 (35,035) | 276,438 (13,922) | 1,489,372 (48,957) |
| Net cost of waste strategy inc PFI | 1,177,899 | 262,516 | 1,440,415 |
| Costs of 'do minimum' | 1,441,720 | 322,331 | 1,764,051 |
| Saving of waste strategy inc PFI over 'do minimum' | 263,822 | 59,815 | 323,637 |

- 203 The overall conclusion therefore is that:
- a) The PFI project offers value for money, based on key assumptions and allowing for sensitivities.
 - b) Compared to the do minimum scenario the project is expected to avoid costs of £60m for the City Council over the life of the contract.
 - c) The PFI project is affordable, based on key assumptions and allowing for sensitivities.

Human Resources (HR)

204. There are no implications in respect to Human Resources.

Equalities

205. Compliance with the statutory obligations in relation to equalities under the equalities legislation was a criterion for the selection of the contractor in the procurement process, as is required by the Council's equality policies. The PFI contract will also require compliance with equalities legislation including any future legislative requirements during the life of the contract.

206. The Output Specification for the project contains a service output stating that: "The Contractor shall address issues of equality, disabled access and social exclusion where relevant to aspects of the Service." AmeyCespa has responded to this requirement in the Contractors Proposals documents to ensure they meet the Council's requirements.
207. In the course of dealing with the planning application for the facility, consideration will be given to an equalities impact assessment of the project. Appropriate equalities impact assessments will also be carried out in advance of service delivery.

Human Rights Implications

208. The procurement has been conducted in a manner consistent with the Councils' obligations under Human Rights legislation.
209. The Council is bound to have regard to Human Rights implications in its decision making. The subject matter of this report however is about the award of the waste PFI contract as a culmination of the procurement process, which follows a statutory procedure. That being so, the Human Rights implications of this decision in itself, are limited. However, if the Councils ultimately resolves to award the contract to AmeyCespa, the next key stage will be the submission and determination of a planning application for the site upon which the waste facility will be located. Human Rights will be a matter for consideration at that stage, and the following provisions together with any others identified at the time as being relevant, will be subject to consideration, as well as the general requirement that the Councils' actions must be proportionate.

Human Rights Provisions

- Protocol No 1: Article 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties.

- Article 6: Right to a fair trial

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial

in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

- Article 8: Right to privacy

(1) Everyone has the right for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Legal

210. The proposed long term waste management contract is the primary method by which the Councils will discharge their statutory duties as defined earlier in the report.

Contractual Arrangements

211. PFI is a highly complex form of procurement as detailed in this report. If it is decided that this contract should proceed, the Councils and AmeyCespa will enter into various contractual documents. Whilst the principal agreement comprises the Project Agreement it should be noted that a number of other agreements will require completion, principally the Funder's Direct agreement,
212. Also because this is a joint procurement with North Yorkshire County Council, and the Project agreement will not include the City of York Council as a party, the City Council will need to enter into a separate waste management agreement with North Yorkshire County Council . Detail of the contractual structure is dealt with throughout the report.
213. There will also be ancillary agreements. Entering into the arrangements will create contractual obligations upon the parties, which are described in this report in the Contract Overview Section (paragraphs 95-127).

Powers

214. In summary, the Council is empowered to enter into the contractual arrangements referred to in this report by the following legislation:

a) Section 51 Environmental Protection Act 1990 which places a duty upon waste disposal authorities to make arrangements for the disposal of waste in their area, as set out below:

Section 51(1) It shall be the duty of each waste disposal authority to arrange—

for the disposal of the controlled waste collected in its area by the waste collection authorities; and

for places to be provided at which persons resident in its area may deposit their household waste and for the disposal of waste so deposited;

b) Section 111 Local Government Act 1972 which contains powers enabling the Council to do anything to facilitate, or is incidental or conducive to the discharge of its functions, as set out below:

Section 111(1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

c) Section 2 Local Government Act 2000, which empowers authorities to do anything for the promotion of the well-being of their area, as set out below:

Section 2 (1) Every local authority are to have power to do anything which they consider is likely to achieve any one or more of the following objects—

(a) the promotion or improvement of the economic well-being of their area;

(b) the promotion or improvement of the social well-being of their area, and

(c) the promotion or improvement of the environmental well-being of their area.

Local Government Contracts Act 1997 Certificates

215. The Local Government (Contracts) Act 1997 facilitates PFI contracts by removing concerns about authorities' power to enter into contracts of this nature. In particular the Act enables it to be certified, in relation to a contract, that the local authority both has the power to enter into the contract and has exercised that power properly in doing so. It is proposed that the Director of Customer and Business Services be empowered to issue certification under the Act to enable the contract

to be entered into. The giving of a certificate under these provisions is a personal undertaking by the officer involved and accordingly the Council is asked to indemnify the officer in respect of any potential liability on giving the certificate.

Procurement Process

216. The Public Contracts Regulations 2006 prescribe how public sector procurement for works, supplies and services should be undertaken, and also include detailed provisions in relation to the competitive dialogue procedure referred to paragraphs 41-57 of this report. In accordance with the requirements of the procedures followed under the Regulations, the principal decision for the Authority at this stage will be whether or not to award the contract to AmeyCespa.
217. The City Council is also required to comply with its standing orders in relation to contracts, which are set out in the Contract Procedure Rules, and which reflect the need to undertake procurement in accordance with the statutory requirements set out in the report.
218. Throughout the procurement process the Councils have instructed external legal advisers with experience in the procurement of large scale projects such as the long term waste management contract. The procurement has been conducted in accordance with their advice and they have been fully involved in the negotiation and agreement of the terms of the Project Agreement and associated documents.
219. The Council's external legal advisers, Watson Burton, have advised the Council that, in their view, the procurement to date has been carried out in compliance with the requirements of the Public Contracts Regulations 2006.
220. In making its decision the Council is required to comply with the provisions of the Constitution including the following decision making principles as follows:
 - Respect for human rights and equality of opportunity
 - Presumption of openness
 - Clarity of aims and desired outcomes
 - Decisions will be proportionate to the intended objective
 - Having regard to relevant facts and considerations, and disregarding irrelevant ones
 - Due consultation and taking professional advice from Officers
 - Explaining options considered and giving reasons

Crime and Disorder

221. There are no implications relating to crime and disorder.

Information Technology

222. There are no implications in respect of information technology.

Property

223. In anticipation of the procurement, the Councils entered into discussions with a number of owners of sites that were potentially suitable as the site for a waste facility. Those discussions included discussions with the freeholder of Allerton Park and the County Council has an option with the right to call for the grant of a lease. Throughout the procurement, the Councils made it clear to tenderers that, whilst options had been obtained over a number of sites, this was to ensure a competitive procurement and the Councils would not accept any risks associated with the chosen site. The Councils also made it clear that the securing of options for potentially suitable sites did not constitute a request to use those sites or an implied opinion on the suitability of those sites for the solutions offered.
224. AmeyCespa is presently finalising negotiations with the freeholder of Allerton aggregates quarry and landfill that will result in the agreement of terms of a lease to be granted to AmeyCespa as the Council's nominee under the option agreement.
225. The Council will not lease the land themselves but will have the ability (without being obliged) to call for an assignment of AmeyCespa's lease when the proposed contract comes to an end. All assets used in the PFI including the contractors lease will revert to the County Council at no cost on termination of the contract.

Risk Management

226. The key risks can be split into contractual risks pre financial close, planning risk and project risks. Contractual risks are those associated with entering into the contract, planning risks occur between commercial and financial close and project risks arise once the contract is operational. The overall risk analysis for the project is set out at **Appendix 10 (a)**.

Contractual risks pre financial close

227. The key contractual risks pre financial close are set out below:
- One or both of the Councils do not sign the contract (including the Waste Management Agreement). This could occur at commercial close or financial close.
 - AmeyCespa do not sign the contract, at either commercial or financial close. Not signing at financial close could be caused by contractor termination or by a material breach of contractor obligations.
 - The project becomes unaffordable or does not offer value for money for the Councils between commercial and financial close. This could occur due to a number of factors such as delay, increased debt costs or adverse foreign exchange movements.

- There is a challenge to the decisions taken by the Councils relating to the contract award prior to commercial close.
 - There is a failure or delay in achieving planning permission (addressed separately below).
228. The contractual risk relating to affordability primarily arises from the financial implications of a 'split' commercial and financial close.
229. Work continues to be undertaken on the planning application, and the Councils believe the proposal represents a potentially deliverable project. However, the biggest risk to the project is achievement of planning permission.
230. At financial close all Funders' Agreements are in place. This triggers access to the funding and with it the commitment to pay the banks by way of one off arrangement fees of 0.2 to 0.3% of debt and commitment fees at 50% of the agreed margin until the loans are drawn down. This ensures access to fixed rate funding. Once funding is drawn down, interest and capital repayments become payable. Therefore contract costs start to be incurred from financial close.
231. Should a decision have been taken to have financial close in advance of achievement of planning permission, the Councils would become liable for financial arrangement and commitment fees from commercial close. The Councils would also be responsible for the costs of unwinding financial arrangements if planning permission were to be refused. However, if financial close takes place after planning permission is obtained then the Councils become liable to debt charge movements as a result of market changes until the debt is drawn down. Thus the longer it takes to achieve planning permission the higher the commitment fees. This aspect was particularly pertinent because the cost of debt and particularly the banks' margins were at an all time high at CFT, thus increasing the Councils exposure. In addition the Councils are exposed to foreign exchange changes until Euro currency is purchased. This is in line with the sensitivities modelled in the financial implications section (paragraphs 195 and 196).
232. The financial consequences of these risks and cross-reference to clauses in the project agreement (contract) are set out in **Appendix 10 (b)**. On balance taking the risk of movement in costs as a result of fluctuations in funding and foreign exchange rates is preferable to the certain exposure to commitment fees payable in advance of obtaining planning permission.

Planning risk

233. A critical risk to the project is failure to achieve or delay in achieving planning permission. It is AmeyCespa's responsibility to secure a satisfactory planning consent and to use reasonable endeavours in doing so. A failure to use reasonable endeavours would put them in breach of their contractual obligations.

234. Until the equipment and materials are ordered the costs of capital are subject to agreed indexation (and thus will continue to rise) and as a significant proportion of the equipment is sourced from the EU, the costs are subject to the impact of adverse foreign exchange movements.
235. In addition delays/failure to achieve planning permission incur additional development costs and additional exposure to current levels of landfill tax and LATS.
236. Any architectural enhancement costing more than £500k arising as a result of planning permission conditions, in addition to the cost of S106 and S278 enhancements (which relate to planning and highways requirements), will fall to the Councils.
237. The financial consequences of a delay in achieving planning permission are indicated in the financial implications section paragraph 196. The consequences of a failure to achieve planning permission are set out in **Appendix 10 (b)**.

Project risks

238. The key project risks as agreed with AmeyCespa are summarised in the paragraphs below.

Financial risks

239. The Councils are liable to pay pass through costs relating to lease costs and non-domestic rates. The contract includes indexation relating to inflation; the Council has the risk should the indices used not reflect actual increases in costs.
240. The contract includes guaranteed levels of third party income (electricity and recycle sales). The actual level of third party income is a risk for AmeyCespa subject to the Councils obligations to deliver minimum tonnages. Where third party income exceeds the guaranteed levels additional income is shared 50:50 with the Councils.

Tonnage Risk

241. The contract requires the Councils to supply waste to the 'guaranteed minimum tonnage' (GMT). For tonnages supplied above GMT the Councils pay at banded rates. If the Councils do not supply waste at GMT levels, AmeyCespa must make 'reasonable endeavours' to make up tonnages using locally available commercial waste. If it is unable to make up tonnages then the Councils will pay for the lost income and may be subject to paying compensation to AmeyCespa.
242. During the procurement process AmeyCespa provided an independent evaluation concluding that there is sufficient commercial waste arising

of sufficient quality to ensure that commercial waste supply would not be a significant risk. This report was evaluated during the procurement process and considered sound and justified. The report was also considered to use a relatively conservative approach to estimating potentially available commercial waste tonnage.

243. Since appointment as Preferred Bidder, a further report projecting commercial waste arisings in North Yorkshire and York until 2026 has been produced by Urban Mines for AmeyCespa. This latest report confirms that there is likely to be sufficient commercial waste available from North Yorkshire and York for the duration of the Contract to effectively mitigate any risk that the Councils will have to compensate AmeyCespa for deliveries below GMT. Further detail on the availability of commercial waste is included in **Appendix 11**.

Performance, design, planning construction/ property, technology and operational Risk

244. In general these risks are with AmeyCespa. The facilities have been designed by AmeyCespa and their advisers including the choice of technology and the subcontractors constructing and operating the plant.
245. However, the worst case scenario would be that the plant is fully constructed but fails to operate. The Special Purpose Vehicle (SPV) would be unable to repay its debts, thus requiring the banks to step in and 'run the plant'. If the banks are unable to make the plant operational then the Councils can terminate the contract. Termination would make the Councils liable to pay compensation to the contractor. That compensation is paid by the SPV to the banks. The precise amount would depend on the circumstances and timing of the termination, but it would be based on a theoretical valuation of the contract in the light of those circumstances at that time. The Councils will in turn take ownership of the plant (albeit that it does not work). This scenario is highly unlikely given the contractual arrangements in place and the experience of both AmeyCespa and the funders in this market. However, this scenario could equate to a significant repayment of outstanding capital plus interest.
246. The risk apportionment and implications are substantially in line with standard PFI contracts. Officers and advisers have endeavoured to improve terms throughout the competitive dialogue and the relevant risk positions proposed by tenderers were considered in the evaluation of tenders. The Council's legal advisors, Watson Burton have advised that the risks contained in the proposed Contract represent a balance that is in favour of the Councils.

Next Steps

247. Should the Councils decide to approve the award of the contract to AmeyCespa the formal signing of the contract (commercial close) is

likely to take place in January 2011. At the same time the County Council and City Council will sign the Waste Management Agreement. The decision to award the contract will not prejudice the outcome of the planning application. It should be noted that the County Council is expected to consider the proposal at its Council Meeting on 15th December 2010.

248. AmeyCespa expects to submit a planning application in January 2011. The Environmental Permit application will also be made to the Environment Agency and twin tracked with the planning process.
249. Following the planning application, the planning process will involve statutory consultation and comprehensive assessment of environmental impacts including many issues raised following the announcement of the Preferred Bidder. AmeyCespa will need to demonstrate the reasons behind site selection and acceptability of any environmental impacts to achieve satisfactory planning consent.
250. Financial Close will occur around three months after a successful planning application.

Conclusions and Reasons for Decision

251. For the reasons set out in the report and particularly the Background Section the Councils need to identify means to deal with the future disposal of waste for their areas, to ensure that they are able to comply with their statutory duties in relation to waste disposal. This procurement has therefore been carried out pursuant to the joint waste strategy. The procurement has been carried out in compliance with the requirements of the Public Contracts Regulations 2006 and the Councils own Contract Procedure Rules
252. Throughout the process there has been thorough consideration of alternative solutions. The Councils have been technology and site neutral and bidders were free to propose location(s) and technology which they felt were deliverable and would offer the best value solution to the Councils.
253. The tender submitted by AmeyCespa has been judged, using objective criteria, to be the most economically advantageous tender. As such, in accordance with the Public Contracts Regulations 2006, it is now possible for Members to consider only whether to award the contract to AmeyCespa.
254. The proposed solution has a sound strategic fit with local and national policy and the Government continues to be fully committed to the project.
255. The Council's legal advisers, Watson Burton, have advised that the risks contained in the proposed Contract represent a balance that is in favour of the Councils.

256. The financial assessment has concluded that the project is affordable and offers value for money based on key assumptions and allowing for sensitivities.
257. Whilst the procurement process has been a lengthy affair, the project remains an appropriate solution to the Council's needs.

Recommendations

Recommendations - North Yorkshire County Council

258. The following recommendations are being considered by the County Council in their direct contractual role with AmeyCespa. Since the City Council is only proposing to enter into a Waste Management Agreement with the County Council that replicates the key elements of the core contract it is important that the City Council is supportive of the approach taken to finalise the overall agreement.
259. that the Executive agree that the following recommendations are put to the County Council:
- that the County Council agree to award the Waste Private Finance Initiative (PFI) contract to AmeyCespa for the service operation period of 25 years with an option to extend for up to 5 years, and, in that event;
 - that the County Council commits to make sufficient budgetary provision for the contract for its term, and determines the limits of the affordability envelope within which financial close may be agreed, as set out as in paragraph 7.3 (para. 193 equivalent in CYC report);
 - that delegated authority is given to the Corporate Director, Business and Environmental Services (acting in consultation with the Corporate Director, Finance and Central Services, and the Assistant Chief Executive, Legal and Democratic Services) to determine the final terms of the following documents at commercial and financial close as necessary:
 - a) the Private Finance Initiative (PFI) contract between the County Council and AmeyCespa; and
 - b) the Waste Management Agreement between the County Council and City of York Council; and
 - c) the Funders Direct Agreement with AmeyCespa's funders; and
 - d) the Novation Agreement; and
 - e) any documents ancillary to the Private Finance Initiative (PFI) Contract, the Waste Management Agreement and the Funder's Direct Agreement, and any other documents necessary to give effect to this project.

- that delegated authority is given to the Assistant Chief Executive, Legal and Democratic Services, to execute on behalf of the County Council the following documents at commercial and financial close stage as necessary:
 - a) the PFI Contract with AmeyCespa; and
 - b) the Waste Management Agreement with City of York Council.
 - c) the Funders Direct Agreement with AmeyCespa's funders
 - d) the Novation Agreement
 - e) any documents ancillary to the Private Finance Initiative (PFI) Contract, the Waste Management Agreement and the Funders' Direct Agreement, and any other documents necessary to give effect to this project.

- that the Corporate Director, Finance and Central Services, is authorised to issue the certificates under the Local Government (Contracts) Act 1997 to confirm the County Council's powers to enter into the contracts referred to in the above bullet point a), b), c) and d) above.

- that an indemnity be given by the County Council to the Corporate Director, Finance and Central Services, against any claim that may arise out of or in connection with the issue of the certificates under the Local Government (Contracts) Act 1997.

- That the County Council note that in the event that the above is agreed by the County Council, the Executive will take all such decisions as may be required out of or in connection with the implementation of the Council's decision to award the PFI Contract to AmeyCespa, including agreeing that financial close may proceed within the limits of the affordability envelope set by the County Council.

Recommendations – City of York

260. The Executive agree that the following recommendations are put to Full Council:
- That the City Council is supportive of the award of the Waste Private Finance Initiative (PFI) contract by North Yorkshire County Council to AmeyCespa for the service operation period of 25 years with an option to extend for up to 5 years, and, in that event;

 - that the City Council commits to make sufficient budgetary provision (£750k per annum growth from 2011/12 to 2015/16 inclusive) for the contract for its term, and determines the limits of the affordability envelope within which financial close may be agreed, as set out as in paragraph 193 ;

 - that delegated authority is given to the Director of City Strategy (acting in consultation with the Director of Customer & Business Support Services, and the Head of Civic, Democratic and Legal Services) to

determine the final terms of the Waste Management Agreement between the County Council and City of York Council documents at commercial and financial close as necessary:

- that delegated authority is given to the Head of Civic, Democratic and Legal Services, to execute on behalf of the County Council the Waste Management Agreement with North Yorkshire County Council.
- that the Director of Customer & Business Support Services, is authorised to issue the certificates under the Local Government (Contracts) Act 1997 to confirm the City Council's powers to enter into the contract referred to in the above paragraph.
- that an indemnity be given by the City Council to the Director of Customer & Business Support Services, against any claim that may arise out of or in connection with the issue of the certificates under the Local Government (Contracts) Act 1997.
- That the Council note that in the event that the above is agreed by the Full Council, the Executive will take all such decisions as may be required out of or in connection with the implementation of the Council's decision to award the PFI Contract to AmeyCespa, including agreeing that financial close may proceed within the limits of the affordability envelope set by the City Council.

Reason: In order for Full Council to determine whether to enter into a long term waste treatment contract.

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|--|---|
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Specialist Implications Officer(s) *List information for all*

Andy Docherty
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John Goodyear
Assistant Director Environment

Wards Affected: *List wards or tick box to indicate all*

| | |
|------------|-------------------------------------|
| All | <input checked="" type="checkbox"/> |
|------------|-------------------------------------|

For further information please contact the author of the report

Background papers

Please see below.

Annexes

1. Background Documents
2. a) Inter Authority Agreement 2008
b) Inter Authority Agreement (2009 update)
3. Summary of waste performance
4. a) Defra PFI Credits approval letter
b) Defra confirmation of PFI Credits post CSR letter, October 2010
5. Evaluation Criteria
6. Technical Summary of proposals submitted at each stage of the PFI process
7. Defra FBC approval letter including WIDP Commercial Close Conditions
8. a) Location plan of the proposed site
b) Aerial photograph of the proposed site
9. a) Financial implications (confidential)
b) Financial assumptions (confidential)
10. a) Risk analysis
b) Financial consequences of risk (confidential)
11. Availability of commercial waste
12. Summary of issues raised at NYCC Area Committees
13. Summary of issues raised in correspondence
14. Waste Forecasts and Residual Waste Treatment Capacity

The following confidential documents are available for inspection by Members on request:

- Waste Management Agreement
- Latest draft of the proposed contract with AmeyCespa
- Evaluation reports submitted to Project Board

GLOSSARY

| | |
|--------------|---|
| AD | Anaerobic Digestion |
| BPEO | Best Practicable Environmental Option |
| CFT | Call for Final Tenders |
| DECC | Department for Energy and Climate Change |
| DEFRA | Department of Environment, Food and Rural Affairs |
| EA | Environment Agency |
| EOI | Expression of Interest |
| EFW | Energy From Waste |
| FBC | Final Business Case |
| GMT | Guaranteed Minimum Tonnage |
| HWRC | Household Waste Recycling Centre |
| IAA | Inter Authority Agreement |
| ISDS | Invitation to Submit Detailed Solutions |
| ISFT | Invitation to Submit Final Tenders |
| ISOS | Invitation to Submit Outline Solutions |
| LATS | Landfill Allowance Trading Scheme |
| MBT | Mechanical Biological Treatment |
| MT | Mechanical Treatment |
| MTFS | Medium Term Financial Strategy |
| OBC | Outline Business Case |
| OJEU | Official Journal of the European Union |
| ONS | Office of National Statistics |
| PA | Project Agreement (“the contract”) |
| PFI | Private Finance Initiative |
| PIN | Prior Information Notice |
| PQQ | Pre-qualification Questionnaire |

| | |
|----------------|---|
| SOPC4 | Standardisation of PFI Contracts (Version 4) |
| SPV | Special Purpose Vehicle |
| VFM | Value for Money |
| WMA | Waste Management Agreement |
| WET Act | Waste and Emissions Trading Act 2003 |
| WIDP | Waste Infrastructure Delivery Programme |
| WRATE | Waste and Resources Assessment Tool for the Environment |
| WTS | Waste Transfer Station |
| YNYWP | York and North Yorkshire Waste Partnership |