Agenda item 17

Cabinet – 4 September 2019

Regional Materials Recycling Facility – Coventry – Public Session

Portfolio: Councillor Oliver Butler, Clean and green

Related portfolios: None

Service: Clean and Green

Wards: All

Key decision: Yes

Forward plan: Yes

1. Aim

1.1 In order to address the uncertainty and increasing costs which most local authorities face when trying to secure processing and disposal outlets for the recyclables which they are obligated to collect, local authorities across the region have been exploring the possibility of establishing their own facility for dealing with such waste.

1.2 Coventry City Council (‘Coventry’) is the lead authority on a joint venture to establish a local authority owned and operated Materials Recycling Facility (MRF), which is to be located within the Coventry area and designed to process recyclable material collected across the Midlands region. A regional MRF is deemed feasible and could be delivered at a financial commitment cost of circa. £37.854 million.

2. Summary

2.1 To construct and operate a MRF which is financially viable, and in order to share the risks and benefits of this project, the following six local authorities entered into formal collaboration agreement (JWA1) in March 2019 to be able to influence the direction of the project:

- *Coventry City Council*
- *Walsall Metropolitan Borough Council*
- *Nuneaton and Bedworth Borough Council*
- *North Warwickshire Borough Council*
- *Rugby Borough Council*
- *Solihull Metropolitan Borough Council*

2.2 The outcome of the business case from JWA1 was that a regional MRF was a feasible solution. To continue with the project it is necessary to formalise our commitment for the next stage, which will include further development work including, but not limited to, the costs of procurement, professional advisors, and the submission of a planning application. The next stage will be formalised through signing a second Joint Working Agreement (JWA2), which will commit us to paying our share of these development costs and (assuming this work still concludes that it is a feasible project) an investment in the build and operations of the facility.

2.3 The Council has an option to either be a full partner (investor), or continue with short-term contracts. The project is been pursued based on the Council being full partner to maximise benefits and minimise costs.

3. Recommendations

3.1 Following consideration of the confidential information in the private session of the agenda, Cabinet will be recommended to:

3.2 Delegate authority to the Executive Director for Economy and Environment in consultation with the Portfolio Holder for Clean and Green to negotiate the terms and enter into a Joint Working Arrangement (JWA2) between the Council and other Partner Councils in order to facilitate the delivery stage of a local authority owned Materials Recycling Facility (MRF).

3.3 Approve an amendment to the 2019/20 Capital Programme (approved 28 February 2019) to fund the Council's share of development costs, noting that this should be recovered from the net interest receivable on loans over the 20 year life of the project.

3.4 Approve a further investment and to be funded from a combination of loan repayments from AssetCo and the net interest return from loans.

3.5 Delegate authority to the Executive Director for Economy and Environment in consultation with the Executive Director of Resources, Transformation, and the Portfolio Holder for Clean and Green to finalise and agree the detailed terms of the transaction with AssetCo, such authority to include:

- The power to enter into the relevant binding agreements including a shareholders' agreement and associated documents necessary to complete the transaction with AssetCo;
- In relation to the management of the loan facility, the power to negotiate and agree variations to the terms of the loan facility;
- The power to approve the Council representation on the AssetCo Board, once the Board is established.
- The power to enter into the Service Level Agreement with AssetCo committing the Council's waste tonnage for 20 years.

3.6 Note a maximum gate fee (for all recyclable materials delivered by the Council to the Materials Recycling Facility) will be determined and recorded in JWA2.

3.7 Note that if the project does not proceed, the development costs will be abortive and will be funded from a corporate revenue reserve.

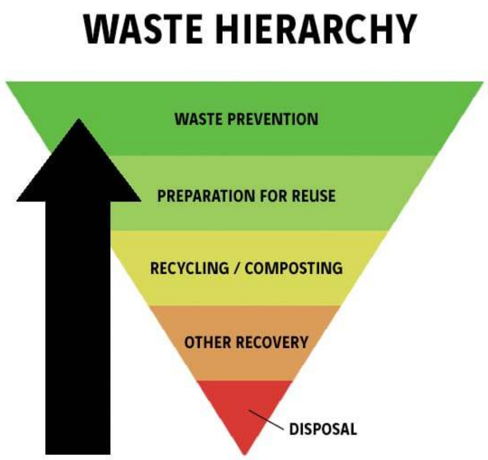
4. **Report detail – Know**

Legislative drivers:

4.1 Local authorities have a duty under the Waste Regulations 2011 to collect separately four types of recyclable material (glass, metal, paper and plastic) and to ensure that collection methods pass the national legislative requirements that they are Technically, Environmental and Economically Practical (TEEP).

4.2 The Waste Regulations transpose the European Union Waste Framework Directive into UK law and are enforced in England by the Environment Agency. The core direction and emphasis of the Directive is the movement of waste management practices up the waste hierarchy (Figure 1, below), and its implementation in line with life cycle thinking.

Figure 1 – The Waste Management Hierarchy:



4.3 The collection of recycling at the kerbside is a statutory service that is under review in the Governments Resource and Waste Strategy consultation and the Council is currently unlikely to meet the national target of recycling 50% of household waste by 2020.

Background

4.4 In order to recycle the waste, which it collects at the kerbside, the Council currently disposes of that material via a contract with a third party reprocessor. In recent years, there has been significant volatility in the recycling market because of changes to the ways in which MRFs operate, increasingly stringent quality requirements, economic factors and China and South East Asia's policy to severely restrict imported waste for recycling. Therefore, the Council has seen prices for the disposal of such material increase dramatically. Walsall retain the risk associated with market prices in relation to the tonnage of material we are obligated by law to collect.

4.5 Escalating costs associated with the processing of dry mixed recyclate are a direct reflection of the volatility of global market prices, and the unavailability of traditional material outlets in China and South East Asia. In addition, the costs associated with the development of new technologies in the UK and an emerging market in Europe are currently being passed directly to local authorities through pricing of existing contracts.

4.6 This cost has increased substantially over the last five years, and has increased by 3% in the last quarter alone based on resale value of recycled materials. The resale value of recycled materials fluctuates considerably, and the current price is based on the market value of material at Quarter 1 of 2019/20.

4.7 Evidence from the Council's recent procurement exercises and from neighbouring authorities shows that this upward trend is likely to continue with substantial rises as the private sector continues to move the risk of end market prices and legislation more and more to local authorities.

Proposed Project and Partnership Working

4.8 In the last 12 months, Coventry have developed a detailed Business Case to determine the viability of a MRF. This Business Case has concluded that a facility with a capacity of 120,000 – 175,000 tonnes could be commercially viable. The Council currently collects approximately 22,500 tonnes of recyclable waste per annum.

4.9 To construct and operate a MRF that is financially viable, and in order to share the risks and benefits of this project, the following six local authorities ('Partner Councils') entered into a JWA1 in March 2019:

- *Coventry City Council*
- *Walsall Metropolitan Borough Council*
- *Nuneaton and Bedworth Borough Council*
- *North Warwickshire Borough Council*
- *Rugby Borough Council*
- *Solihull Metropolitan Borough Council*

4.10 The Business Case sets out the Project's aspirations, namely, to allow Partner Councils to:

- Take control of regional recyclate management;
- Benefit from any upside of the price of processed recyclate and off-set costs and risks against income generated from the MRF;
- Avoid paying risk premiums to the private sector to offset market fluctuations;
- Future proof the MRF so that it is flexible and adaptable;
- Enhance recyclate quality;
- Benefit from economies of scale;
- Benefit from any future expansion and commercialisation of the plant to satisfy any private sector demand; and
- To have greater control on the end uses of the recyclate produced

4.11 The Business Case has been developed assuming the recyclable materials (primary feedstock) from each of these authorities will be committed to the project, thereby making the facility cost effective, whilst leaving some tonnage headroom for commercial growth and the future needs of the Partner Councils, or the addition of more Partner Councils.

4.12 In addition, Members will be aware from media coverage of the Government's Resource and Waste Strategy review, that this includes the potential for greater producer responsibility and the introduction of deposit schemes materials, e.g. plastic bottles. The Business Case deals sufficiently with these levels of future uncertainty around the exact composition of the recyclate collected by the Partner Councils.

4.13 The base case for the project assumes 87,126 tonnes per annum in 2018/19, rising to 94,350 tonnes in the first year of operation and to 116,200 tonnes per annum over the long-term operation of the MRF as outlined in **Table 1**, below. The Business Case is based on 2018/19 waste arisings and composition data provided by the Partner Councils, including waste characterisation sampling undertaken during Spring 2019.

Table 1: Partner Council Feedstock Tonnages

Partner Council Feedstock Tonnage			
Partner Council	**Baseline arisings (2018/19) tonnes**	**Projected Y1 tonnage (2022/23)**	**Projected Y20 tonnage (2042/43)**
Coventry City Council (household)	22,304	23,600	29,800
Coventry City Council (commercial)	1,804	3,000	3,000
Walsall Council (Household and Commercial)	22,049	24,200	30,500
North Warwickshire District Council	5,235	5,650	7,800
Nuneaton &Bedworth Borough Council	8,581	9,450	11,150
Rugby Borough Council	10,742	11,300	14,200
Solihull Metropolitan Borough Council	16,411	17,150	19,750
Total	**87,126**	**94,350**	**116,200**

4.14 Partner Councils have considered existing arrangements on their separate collection of paper and/or glass and the cost implications included with the Business Case.

4.15 The benefits and the risks associated with this project (the development, delivery and 20 year operation of the MRF by the partner councils) are dependent on the level of Council engagement. If the Council decides to commit its recyclable waste to the project over a long period there are a several advantages. These include a lower gate fee than is likely to be available on the open market, a potential share of income generated by capacity at the facility, more certainty in a volatile marketplace and potentially greater control over what happens to the material during the recycling process.

4.16 The level of exposure to risk also increases dependent on the Council's level of engagement. The current MRF proposal will lock the Council into a long-term agreement of 20 years for the operational life cycle of the MRF, which will restrict the Council's ability to go to the market with its recyclable material or change its collection methods. If the MRF suffers significant operational issues or breakdowns the Council's costs may increase to cover periods when the MRF is unavailable. Future legislative changes could affect the Council that could make the recycling of certain materials more costly or reduce their availability or value. The volatility of the markets will still have an impact on the material produced by the MRF and if the Council is a capital investor there is the chance that the Council's capital stake and its return on investment could be at risk if the facility proves more expensive to build and operate or ultimately not viable.

Proposed legal agreements and structure

4.17 The Partner Councils have shared the costs in producing the Business Case based on the ratio of their current tonnage. Along with an investment proposal, this report seeks authority to strengthen these arrangements through the second working agreement JWA2, which will cover further development work up to 'Financial Close' as defined in 4.18 below. This work includes, but is not limited to, the costs of procurement, professional advisors, and the submission of a planning application for the construction of a new MRF.

4.18 Financial Close is the date that simultaneously all of the below occur:

- AssetCo is incorporated;
- All contracts to build and operate the MRF are novated from Coventry to AssetCo;
- The shareholders' agreement between Partner Councils and AssetCo is executed;
- AssetCo will draw down loans from its investors.

4.19 At Financial Close, the Partner Council's will be required to establish jointly an arms-length company (AssetCo) to enter into contracts and deliver the recycling solution, funded through loans from Partner Councils to commit to the project over a life cycle of 20 years. The project has been evaluated over a twenty years cycle, although at the end of this period, the asset and processing demand will still exist. Therefore, AssetCo could continue operating as shareholders see fit, subject to potential further investment requirements. This is why JWA2 references a 40-year shareholder agreement. JWA2 will also commit the Council to investing in AssetCo through a shareholding (formalised through the shareholders' agreement) and issue of loans.

4.20 The Council can withdraw from the project at any time during the procurement phase up until Financial Close if the 'Maximum Gate Fee' for the Council is breached. The Maximum Gate Fee is the base gate fee that is calculated from the Business Case that results in the project no longer being financially viable for the Council and will be defined and stated in JWA2.

4.21 The addition of any further Partner Councils would be subject to an analysis and they would only be able to join at JWA2 stage if each existing Partner Council's position is not negatively impacted. However, additional Partner Councils would further de-risk the project, reduce the processing cost and therefore further improve savings to disposal costs. In addition, it would result in reduced investment values for the current Partner Councils, as the total investment required would be shared amongst more councils.

4.22 The proposed structure is a newly incorporated company (AssetCo) in which local authorities would invest and become shareholders, based on their proportion of consolidated tonnage in 2018/19. AssetCo would develop, build and then own and manage the MRF. The group structure is to satisfy Teckal requirements (i.e. for public procurement processes it will be a local authority controlled company). Therefore, two wholly owned subsidiaries of AssetCo would also be incorporated; one to contract with local authorities to obtain the benefits of a wholly owned and controlled company (i.e. Teckal status) (LACo); and the other to contract with third party feedstock suppliers so that there is a vehicle for commercial activity (TradeCo). LACo will trade with Partner Councils and TradeCo with third parties.

4.23 The aim is for AssetCo to be a company limited by shares – since AssetCo is to generate profits that are returned to its investors via dividend payments.

Facility Technology Design:

4.24 The composition and characteristics of Partner Council recyclable materials is used to inform the technology solution required the MRF to deliver high quality material outputs. The composition of the recyclate, and degree to which is it contaminated by non-recyclable material, has a direct effect on the economic performance of the project and any associated revenues and subsequent disposal or treatment costs.

4.25 The Business Case sets out the outline design and technology configuration that would enable the facility to extract high quality materials for future use. The proposed solution broadly includes:

- Bag splitter / opener – to break plastic sacks where necessary;
- Removal of cardboard;
- Removal of glass and glass classification by colour and size;
- Separation of different paper fraction (e.g. newspaper, card);
- Separation and sorting by polymer of plastic materials;
- Over band magnet for ferrous metal separation and eddy current separation for non-ferrous (aluminium) metals;
- Quality control – negative picking stations to remove non-target materials.
- The outline design takes into consideration layout and ease for maintenance and future enhancements. It offers a robust solution to produce high quality marketable commodities with the flexibility to adapt to changes in feedstock and legislation.

4.26 The design of the MRF is to manage a throughput of 120,000 tonnes per annum based on two operating shifts per day, with the flexibility to increase processing up to 175,000 tonnes per annum through additional shift patterns. Any additional costs for an increase in throughput would largely be associated with labour and utilities.

Proposed Site:

4.27 The MRF will be located on the former allotment land to the rear of the Energy from Waste facility operated by the Coventry and Solihull Waste Disposal Company in the centre of Coventry. The site is roughly 8 acres in size, of which roughly half is required for the facility and is accessible via Whitley Depot. The designated site is suitable for use associated with the treatment of waste in Coventry's Local Plan and requires planning permission.

Council Corporate Plan priorities

4.28 This regional Coventry MRF will contribute to the corporate plan priority for:

Internal Focus – modernising our services to meet the ever-changing environment and behaviours, striving to improve customer satisfaction and support Walsall in being a **resilient council.**

Risk management

4.29 The risk of changing markets for the Council's recyclable waste or being unaffordable is a major one. Full engagement with the MRF would significantly help the Council to manage and mitigate that risk by detailed third party modelling and using prudent assumptions for spare capacity sold and commodity prices.

4.30 The identified risks to the project are as follows:

- **Business Risks** – such as failure to secure political support, state aid and impact of UK Waste Policy Review. These have the potential to cause delays and/or impact on the Business Case;
- **Partner Risks** – such as one or more partners do not sign up to JWA2 that creates a greater financial impact on other partners;
- **Planning and Permitting Risks** – which are considered to be low given the existing waste infrastructure adjacent to the site;
- **Delivery Risks** – such as issues with interface management and contracting structure causing delays and additional costs;
- **Operational Risks** – such as unavailability of secure end markets for process outputs, service disruption and contamination of the delivered recyclate, impacting on performance and revenue potential;
- **Finance Risks** – lower gate fees for third party inputs, change in rates for inflation, borrowing and foreign exchange, impact on revenue and costs;
- **Contract Risks** – these are currently consistent with other similar recyclate processing projects; and
- **Security for Loans** – the Council will require security for its loans to AssetCo because without such protection, if the venture fails, leading to AssetCo becoming insolvent (or alternatively, should AssetCo default on loans repayments for any other reason), the Council will be at risk of being unable to recover any outstanding loans.

4.31 The risks will be managed and mitigated as follows:

- Mitigation for partners not signing up to JWA2 would be mitigated as detailed below;
- A competent, professional and well-resourced project team has been established by Coventry to deliver the project, which includes external advisors, and a Project Manager and Project Director committed to the project;
- A comprehensive risk register is maintained and reported on to Project Board to ensure risks are continually being monitored and managed;
- The greatest risk to project viability, tonnage input risk, has been effectively mitigated through the engagement of Partner Councils committing their recyclate for the duration of the project;
- A Competitive Dialogue procurement procedure is being adopted to ensure that robust, deliverable proposals are received from bidders, which offer value for money and provide the quality outcomes necessary;
- Sensitivities on the potential costs and income have been considered, so that the affordability of the project is fully understood, and with JWA2 containing exit rights for Partner Councils if the project is subsequently deemed unaffordable;
- Planning risk is being managed, with early planning being sought to prevent cost impacts post-Financial Close.

- The Council will mitigate the risk of AssetCo defaulting on loans as follows:

    - The Council will endeavour – through its shareholding and representation on the Board - that AssetCo generates profits and adheres to its obligations, such as loan repayments; and

    - Coventry have proposed that all Partner Councils will hold a debenture over AssetCo. with such debentures being on a *pari passu* basis, i.e. on an equal footing. Therefore, should AssetCo become insolvent, the Partner Councils will share AssetCo's available assets or any sale proceeds of those assets in proportion to the debts due to each Partner Council.

    - Whilst, Coventry have not yet provided details about this proposal, Cabinet should be aware that a debenture will only be as good as AssetCo's available assets and is not a guarantee of repayment of the loan

4.32 The project involves the Council giving loans to the delivery company. As with all loans, there is a risk of default. However, with the intention being that the shareholdings will be wholly owned by the Partner Councils who will be the MRF's customers (in the base case), plus potentially other local authorities committing recyclate materials to the plant on a long-term basis, this reduces this risk. In the unlikely event that there was a reduction in demand with a resultant potential impairment of the loan, this would be a cost to the local authority partners. Recycling materials demand is however as described in the report, expected to increase over time rather than reduce.

4.33 The Council is currently procuring a short-term contract for the disposal of dry mixed recyclable materials. On this Agenda, Cabinet is recommended to approve the award of a short-term contract (of 3years +1 +1). The contract would run from the October 2019 until October 2022 or 2024. The new MRF is scheduled to be operational from May 2023 so this gives the Council flexibility to end the contract at an optimum point to facilitate the provision of dry mixed recycling waste to LACo.

4.34 There is a risk that not all Partner Councils will sign JWA2. This may result in increased investment requirements for those Councils that sign JWA2, hence the recommendation for a further contingency. Although this increases, the risk for remaining Councils and the project would be reliant on more third party feedstock, partly offset by increased reward i.e. a greater share of control and profits, and interest returns on loans. In addition, this risk is mitigated by:

(1) fully engaging with Partner Councils at regular project boards with all Councils thus far indicating that they will be signing JWA2;

(2) JWA2 allowing the Council to exit the project if the Councils individual Maximum gate fee is breached

4.35 There is a risk that the project is not state aid compliant. However, a formal and a fully supported procurement process is being prepared for the creation of a Teckal company. This, together with loans issued at market rate, should mitigate against any claim of unlawful state aid. The primary purpose of the project is recycling, therefore any profit should be incidental which would ward against a challenge. The Project team and their professional advisors are managing these risks.

Financial implications

Development stage under JWA1

4.36 The Council entered into JWA1 on the basis that it would be a Full Partner (i.e. an assumption for modelling purposes that we would be committing our future feedstock to the project and be an investor based on our share of the consolidated tonnage in 2018/19).

Development stage under JWA2

4.37 If the Council approves the recommendations in this report and enters into JWA2 then, amongst other commitments, it will be committed to paying its share of development costs. These development costs include, but are not limited to, the costs of procurement, professional advisors, and the submission of a planning application for the construction of a new MRF.

4.38 Between signing JWA2 and Financial Close, the Council will only be able to exit the project in either or both of two circumstances:

(i) Unanimous agreement of all Partner Councils; or

(ii) The Council’s maximum gate fee being breached.

If the Council were to exit the project via termination clauses in JWA2, then its share of developments costs would be abortive and hence would be a revenue expense. Under JWA2 if the project is aborted, then the Council would only be required to pay for its share of development costs committed as at the end of the month in which withdrawal notice is issued, which limits the risk of abortive spend.

Otherwise, all development costs will be assumed to be a capital investment on the basis the project is proceeding and will be recovered from the net interest receivable on loans to AssetCo.

Investment by a Shareholders’ Agreement (Delivery Stage)

4.39 At Financial Close, AssetCo will require investment via share purchases and loans from the Partner Councils to fund the CAPEX capital build costs and part of the OPEX costs until it starts to generate sufficient income. JWA2 clearly sets out the intention for each Council to enter into a recyclate supply agreement with AssetCo on or around the same time as the share-holder agreement is signed.

Conclusions from the full business case

4.40 The Business Case has been developed with the MRF operating as a 'standalone' project to support the Partner Councils in the treatment of dry mixed recyclate. The base case costs assume full operational cost recovery of the MRF (including financing costs) through a processing gate fee charged to each Partner Council. The benefits of the sale of recyclate will be passed to the Partner Councils through this lower gate fee, and third-party feedstock suppliers (commercial waste or other local authorities) may be sourced to fill any headroom and form an additional income stream to Partner Councils.

4.41 Using the information of future waste flow from Partner Councils, financial modelling has been completed to initially calculate a "base case" gate fee. This is the gate fee that would need to be charged to Partner Councils to cover all costs arising from CAPEX and OPEX over the 20-year life of the project. This is in effect a break-even position where nominal revenues are materially equal to nominal costs over the life of the project. The base case gate fee is the same for each Partner and assumes no rebates or third party commercial benefits.

4.42 When developing the financial models and assessing the Business Case and feasibility of the project, the consultants have been cautious in their assumptions and built a reasonable degree of contingency into the figures. The model still indicates that, as a partner supplying its recyclable material on a long-term basis, the Council would be paying a lower gate fee than at present. Other councils have already expressed an interest in joining the project or utilising the facility which would reduce our exposure to risk and lower our net gate fee. If the Council makes a capital investment in the facility we are likely to see a return on that investment.

Impact on Council Budgets

4.43 The net gate fee for processing recyclable waste was circa £11.72 per tonne in 2016 and the recent tendering process indicated that the current market price is circa £60 per tonne. This was reported to Cabinet in December last year, and would equate to circa £1.35 million per annum on current tonnage.

4.44 For comparison purposes, there is a financial benefit of disposing of dry mixed recycling waste via the MRF, assuming the "most likely" scenario under the business case. This would deliver a significant financial benefit compared to existing contract arrangements. Price fluctuations will affect both costs charged by Assetco and external providers. Therefore, it is difficult to compare costs over a 20-year period but the MRF costs will forecast to be less than the comparable private sector contract costs.

JWA2 Exit Clauses and Maximum Gate Fee

4.45 As described above, the only circumstances in which the Council can exit after entering into JWA2 is either unanimous agreement of all Partner Councils or the Council's maximum gate fee being breached. There is an opportunity to exit the agreement if the maximum gate fee is breached. Although, it may be that we still continue to work with partners to review and amend the Business Case that would result in a viable project.

Financial risks associated with being shareholder

4.46 The principal risk of being a shareholder is that the value of the Council's shares could go down and share dividends could be low, or there could be no dividends, whilst if the company finds itself in financial difficulty the Council could lose its share investment altogether. However, as shareholder, the Council will not, under ordinary circumstances, be responsible/liable for AssetCo's debts and the company's or its directors' actions.

4.47 Further, with the intention being that the Council will have a shareholding based on the current full business case, whilst there will be no majority shareholder, this means that the Council will not be able to block any decisions that can be carried by a simple majority. An example of this is if future investment or commitment requirements were presented to the Board, if there was a majority decision that the Council did not support, then the Council would be legally bound to invest in proportion to its shareholding. By being an active Board member of AssetCo, the Council will be able to maintain a level of control and significant influence beyond its minority shareholding.

Legal implications

4.48 The project will be delivered by the Project Team (predominantly Coventry, recharged to the project) as appointed by the Project Board, supported by professional advisors on the technical, financial and legal aspects of the project.

4.49 The proposed group company structure will be constructed to satisfy Teckal requirements and includes a LACo and TradeCo for the purpose of engaging in dry mixed recyclate supply agreements with each partner council and trading with any third party feedstock supplier.

4.50 The shareholding arrangement will be aligned to tonnage throughput, based on 2018/19 dry mixed recyclate collected by each Partner Council

4.51 Prior to the establishment of the AssetCo, each Partner Council will be bound by JWA2 which sets out the principals for joint working and funding contributions towards the development of the Project, including Partner Councils:

(i) working together to undertake the procurement of any contract(s) in relation to the development of the MRF;

(ii) not acting in conflict with the Project, so that the Council will agree not to undertake or commission any procurement and/or be involved in any other project that would prevent delivery of all or any part of the Project; and

(iii) being committed to funding the Project and entering into a shareholders' agreement for AssetCo, provided that the Business Case remains viable.

4.52 Partner Councils will make available representation to the Project Board and contribute to key decisions to regulate their respective rights and obligations in relation to the procurement phase of the project. Coventry will act as the Lead Authority during the procurement stage of the project.

4.53 Following the satisfactory conclusion of the procurement phase (i.e. the Business Case remains viable after tendered costs have been received from bidders), each Partner Council will agree to enter into a shareholders' agreement to establish AssetCo to act as the principal contracting entity/delivery vehicle for the project and enter into Principal Contracts. The Principal Contracts are the construction of the building, the installation of the sorting equipment and the management and operation of the facility.

4.54 The first draft shareholders' agreement is not available before executing JWA2. The Council will take specialist legal advice to negotiate about the shareholders' agreement (and any other legally binding arrangements and requirements as the project progresses), to protect the Council's interests.

4.55 Legal Services have reviewed JWA2 and will be consulted about any proposed material changes to the current version prior to its execution by the Council.

4.56 Withdrawal from the project after entering into JWA2 will only be possible where either the maximum gate fee is breached for any one Partner Council (who then serves notice to withdraw) or all Partner Councils unanimously agree to abort the project.

4.57 In proceeding with this project, the Council will be using various powers including those under Section 12 of Local Government Act 2003 and Section 1 of the Localism Act 2011 to establish AssetCo between the Council and the Partner Councils and to acquire shares in the AssetCo.

4.58 The Council will continue to take independent professional advice as the project progresses.

Procurement Implications/Social Value

4.59 Coventry will act as the Lead Authority during the procurement stage of the Project.

4.60 The Council's Procurement Team will have a watching brief over the Procurement Process.

<u>Procurement Approach</u>

4.61 The procurement is proposed to be undertaken in accordance with the Competitive Dialogue Procedure pursuant to the Public Contracts Regulations 2015 (as updated and modified from time to time), and in accordance with the Council's Contract for Procedural Rules, using the Competitive Dialogue Procedure.

4.62 The Project Team have engaged in soft market testing with the market and technology suppliers. This has shown there is considerable interest in the project and has informed the procurement approach.

4.63 The indicative dates are detailed in Table 2 below.

Table 2 – Indicative Key Dates:

Indicative Key Dates – Regional MRF Project		
Key Activity	**Task**	**Date**
Procurement	Contract OJEU Notice Published	Sept 2019
SSQ Stage		Sept - Dec 2019
	Bidder SSQ Development	Sept – Nov 2019
	SSQ Submission	Nov 2019
	SSQ Evaluation	Nov – Dec 2019
	Project Board Approval	Dec 2019
ISDS Stage		Dec 2019 – Feb 2020
	Bidder ISDS Development	Dec 2019 – Feb 2020
	ISDS Submission	Feb 2020
	ISDS Evaluation	Feb – April 2020
	Project Board Approval	April 2020
CFT Stage		April – June 2020
	Bidder CFT Development	April – May 2020
	CFT Submission	May 2020
	CFT Evaluation	May – June 2020
	Project Board Approval	June 2020
Preferred Bidder Appointment		June 2020
Financial Close		Sept 2020
Planning	Pre-Application Engagement	July – Sept 2019
	Submission of Planning Application	Oct 2019
	Determination of Planning Application	Jan 2020
Construction and Installation		Oct 2020 – Dec 2022
Commissioning and Testing		Jan – May 2023
Service Commencement		May 2023

Property implications

4.64 There are no direct property implications for Walsall.

Health and wellbeing implications

4.65 There are no direct health and wellbeing implications for Walsall. However, the project will contribute positively to:

- Create fair employment and good work for all;
- Ensure a healthy standard of living for all;
- Create and develop healthy and sustainable communities.

Staffing implications

4.66 There are no anticipated implications such as TUPE transfer of Council staff, or staff redundancies. There is a resource implication owing to ongoing commitment to have representatives of with sufficient experience on the Project Team and acting on the Board of a strategic venture.

Reducing Inequalities

4.67 There are no direct ways for reducing inequalities for Walsall citizens within this project.

4.68 Through liaison with the Consultation and Equalities team, it considered an Equality Impact Assessment is not required.

Consultation

4.69 There has been no external stakeholders identified for consultation, including because the proposed MRF will not be located in Walsall and will not involve direct services to the citizens of Walsall. However Clean & Green will continue to monitor the Council's duty to consult and will do so should any stakeholders be identified

4.70 As the proposed site is within the Coventry city area, Coventry will carry out appropriate consultation.

5.0 Decide – Work in progress

5.1 The Council has two options:

- Option 1 – Do Nothing
- Option 2 – Full Partner

Option 1 - Do Nothing

5.2 The Council has the option to continue with short term third party contracts for the processing of dry mixed recycling materials. This option is dependent on market conditions, provider availability, and commodity prices. This option has proven challenging in the past as detailed above and considered in the Contract for the Treatment and Recycling of Dry Mixed Recycling Waste on this Agenda.

Option 2 – Full Partner

5.3 The Council has the option to continue as a Full Partner and sign up to JWA2 which will enable the Council to manage its dry mixed recyclable material on a sustainable basis over a 20 year period in order to reduce the cost of disposing of the dry recyclable waste in the long term.

6. Respond

6.1 Subject to Cabinet approval of the recommendations, the next steps for officers are as follows:

- Signing of JWA2 to facilitate the delivery stage of a local authority owned Materials Recycling Facility (MRF).

- Finalise and agree the detailed terms of the shareholders agreement and associated documents in order to complete the transaction with AssetCo.

7. Review

7.1 There will be regular updates from the Partners Project Team / Project Board for Portfolio Holder Briefings, Directorate Management Team meetings and Cabinet as appropriate.

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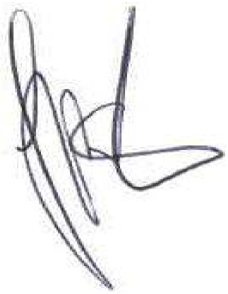

Oliver Butler

Simon Neilson
Executive Director

27 August 2019

Councillor Butler
Portfolio holder

27 August 2019