Coventry City Council

Public report
Cabinet and Council

A separate report is submitted in the private part of the agenda in respect of this item, as it contains details of financial information required to be kept private in accordance with Schedule 12A of the Local Government Act 1972. The grounds for privacy are that it contains information relating to the financial and business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption under Schedule 12A outweighs the public interest in disclosing the information.

Cabinet: 27 August 2019
Council: 3 September 2019

Name of Cabinet Member:
Cabinet Member for City Services – Councillor P Hetherton

Director Approving Submission of the report:
Deputy Chief Executive (Place)

Ward(s) affected:
All

Title:
Proposed Development of a Regional Materials Recycling Facility with Partnering Authorities

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Is this a key decision?
Yes - The proposal in the report is a key decision because the value of the transaction is greater than £1 million

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Executive Summary:

Background
Coventry City Council currently pays c.£1.6million per year to the private sector for the treatment of recyclable material collected in Coventry (including haulage to the treatment facility in London and any recyclate value benefit). This cost has increased substantially over the last five years.

Evidence from recent procurement exercises in both Coventry and neighbouring authorities shows that this upward trend of cost in likely to continue with substantial rises as the private sector continue to move the risk of end market prices and legislation more and more to local authorities.

Therefore in 2017/18 a feasibility study was undertaken to consider the technical and economic viability of developing a Material Recycling Facility to serve Coventry City Council (CCC), neighbouring authorities, and commercial businesses across the region. This study indicated a positive business case, subject to more detailed information.

During the last 12 months a detailed Business Case has been developed to determine the viability of a Materials Recycling Facility. This Business case has concluded that a facility with a capacity of 120,000 – 175,000 tonnes would be commercially viable. CCC currently collects c.24,000 tonnes of recyclable waste per annum.

Partnership Working

To make the construction of a Materials Recycling Facility financially viable and in order to share the risks and benefits of this project a formal agreement has been formed with five other local authorities, namely:

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

The Business Case considered in this report has therefore been developed assuming the recyclable materials from each of these authorities will be committed to the Project, thereby making the facility cost effective, whilst leaving some tonnage head room for commercial growth and the future needs of the Partner Councils, or the addition of more Partner Councils.

To date the costs of producing the business case have been shared by the partners based on the ratio of their likely tonnage inputs. Along with an investment proposal, this report seeks authority to further strengthen these arrangements through a second Joint Working Agreement which will cover the work up to financial close, including but not limited to the costs of procurement, advisors, and the submission of a planning application for the construction of a new Material Recycling Facility.

At financial close, the Partner Councils would be required to establish jointly an arms-length company (AssetCo) to enter into contracts and to deliver the recycling solution, funded through loans from the partners councils.

Location of the Proposed Materials Recycling Facility

The existing Local Plan has made provision for future waste management facilities in Coventry by allocating the site adjacent to the current Energy from Waste plant on Bar Road. The project described within this report proposes to use c.50% of this site to develop the Material Recycling Facility.

Commercial Considerations

The Business Case considers a number of development and recyclate throughput scenarios. The Basecase assumes;

- A 120,000 tonne per annum plant
- Only Partner Council recyclate input of c.90,000 tonnes per annum, rising to c.120,000 tonnes per annum in year 20 through household growth
- £34.45million total capital cost, including £2.85million development costs
- Capital loan of c.£31.6million (i.e. £34.45million less £2.85million)
- Non-capital loan of c.£3.369million representing rolled up interest and cash flow funding required by AssetCo
- £1million total share acquisition in AssetCo
- Of this total £35million, a capital contribution 'share' from CCC of c.£9.7million resulting in a 27.72% ownership of the facility (based on tonnage proportions)

The Basecase provides a treatment cost of c.£44.31 per tonne which equates to c.£1.06million per year (including haulage to the treatment facility in Coventry and any recyclate value benefit), so a direct saving of c.£584,000 per year against Do-Nothing.

Further, the commercial loan provides a net income to treasury management of c.£156,000 per year. In addition, the lease of the land will deliver a further income of c.£100,000 per year to CCC. In total, the Basecase delivers a financial saving of c.£840,000 per year to CCC.

It is prudent to allow some headroom to account for project changes, so the recommendations in the report allow for a capital contingency of £1m. Against the financial contribution of £10.7million (i.e. £9.7m plus £1m contingency), this still equates to an annual return on investment of 7.8% pa.

Sensitivities have been run through the financial modelling to measure the economic and commercial considerations of additional Partner Councils and 3rd party commercial dry mixed recyclate, and the benefit to each Partner Council.

Recommendations:

Subject to the consideration of the private report on this matter, the Cabinet is requested to:

1. Authorise the entering into the Joint Working Agreement (2) between the Council and the Partner Councils in order to facilitate the delivery of the Materials Recycling Facility.

2. Delegate authority to the Deputy Chief Executive (Place) following consultation with the Cabinet Member for City Services to finalise the terms and make such variations as is deemed necessary to the terms of the Joint Working Agreement (2) with the Partner Councils.

3. Approve the Council entering into a lease to AssetCo and to grant delegated authority to the Deputy Chief Executive (Place) in consultation with the City

Solicitor to negotiate and finalise the terms of the lease in order to facilitate the building and the operation of the Materials Recycling Facility Building.

4. (Following the completion of the Business Case and Joint Working Agreement (2) by all the Partner Councils) approve the commencement of a competitive procurement process on behalf of the Partner Councils as Lead Authority).

5. Delegate authority to the Deputy Chief Executive (Place) following consultation with the Cabinet Member for City services and the Director of Finance and Corporate Services to award the contract once the tender process is complete.

6. Approve the use of its powers 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, funded from corporate capital resources

7. Delegate authority to Approve the Council representation on the AssetCo board be agreed by the Deputy Chief Executive (Place) and Director of Finance and Corporate Services, following consultation with the Cabinet Member for City services, once the format of the board is established as part of the final terms of the agreement.

8. Delegate to the Deputy Chief Executive (Place) the submission a planning application for the development of the Materials Recycling Facility to the Local Planning Authority, subject to the conclusion of the necessary surveys.

9. Delegate authority to the Deputy Chief Executive (Place) to begin public engagement associated with the proposed submission of the planning application and to undertake all necessary work to prepare the site ready for the clearance and full site investigation.

Cabinet is asked to recommend to Council:

1. Approve a loan facility to AssetCo on commercial market terms to facilitate the construction and operation of the Materials Recycling Facility.

2. Approve expenditure under Joint Working Arrangement (2) in respect of the Council's share of development costs up to the point of financial close, to be funded from earmarked reserves.

3. Delegate authority to the Deputy Chief Executive Place and the Director of Finance and Corporate Services in consultation with the City Solicitor, and the Cabinet Member for City Services to finalise and agree the detailed terms of the transaction with AssetCo. The authority under this delegation shall also include:

    - the power to enter into the relevant legal agreements 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 for the Council to provide such services as is deemed necessary (e.g. HR and/or Payroll) to AssetCo;
- The power to enter into the Service Level Agreement with AssetCo committing the Councils waste tonnage for 20 years.

4. Approve the addition to the Councils approved capital programme for the purposes of delivering the Materials Recycling Facility.

Council is recommended to:

1. Approve the use of its powers 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.

2. Approve a loan facility to AssetCo on commercial market terms to facilitate the construction and operation of the Materials Recycling Facility.

3. Approve expenditure in respect of the City Council's share of development costs up to the point of financial close, to be funded from earmarked reserves

4. Delegate authority to the Deputy Chief Executive Place and the Director of Finance and Corporate Services in consultation with the City Solicitor, and the Cabinet Member for City services to finalise and agree the detailed terms of the transaction with AssetCo. The authority under this delegation shall also include:

    - the power to enter into the relevant legal agreements 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; and
    - The power to enter into the Service Level Agreement with AssetCo committing the Councils waste tonnage for 20 years.

5. Approves the addition to the Councils approved capital programme for the purposes of delivering the Materials Recycling Facility.

List of Appendices included:

(1) MRF Site Location Plan

Background papers:

None

Other useful documents

(1) DEFRA: Our Waste, Our Resource: A Strategy for England (published December 2018)
(2) WRAP: Gate Fees 2017/18 Final Report (published July 2018)

Has it been, or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

Yes - 16 July 2019

Report title: Proposed development of a Regional Materials Recycling Facility with Partnering Authorities

1. Context (or background)

1.1 Legislative drivers:

1.2 Local authorities have a duty under the Waste Regulations 2011 to separately collect 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).

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:

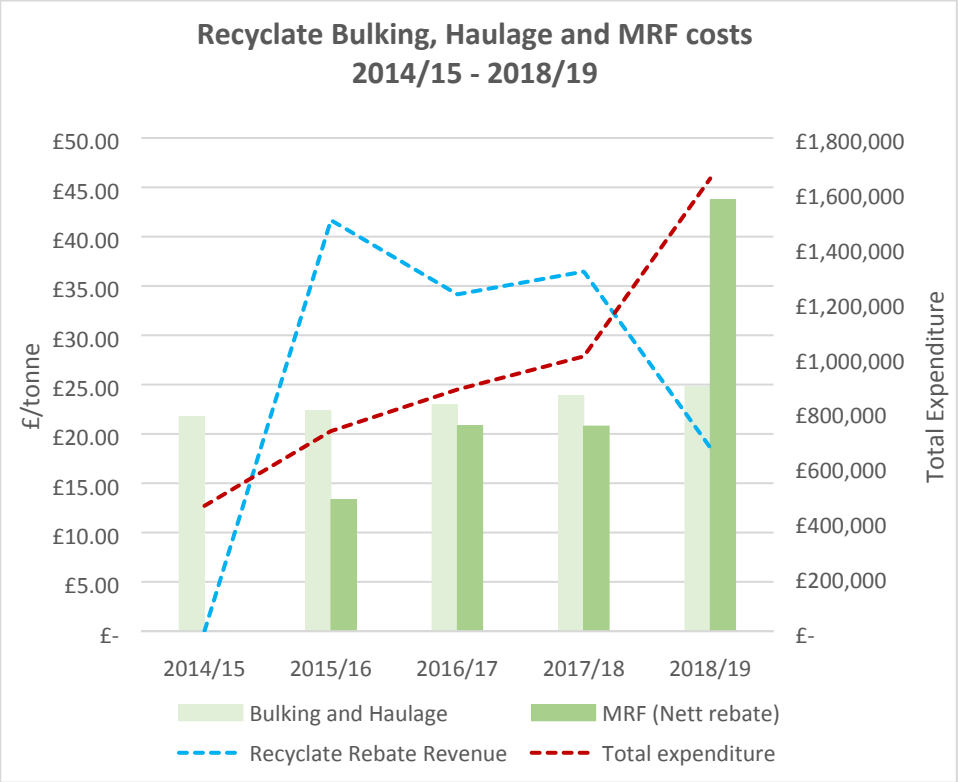
1.3 Current disposal arrangements:

1.4 CCC currently contracts the treatment of recyclate collected at the kerbside to Tom Whites Waste (bulking and haulage) and Biffa (Materials Recycling Facility). The volatility of global markets for processed recyclate has led the private sector to pass the risk of price fluctuations onto the local authorities. As a result, CCC has seen a significant rise in the cost of treatment during the life of the current contract (see Table 1).

Table 1 Bulking, haulage and MRF costs 2014 – 2019

		Year				
		2014/15	2015/16	2016/17	2017/18	2018/19
Tonnage		20,162	19,989	19,793	20,955	21,910
Total Spend	Bulking and Haulage	£ 457,400	£ 463,735	£ 469,260	£ 520,022	£ 597,641
	MRF (Nett rebate)	£ -	£ 266,502	£ 412,701	£ 483,033	£ 1,054,973
	Total	**£ 457,400**	**£ 730,237**	**£ 881,961**	**£ 1,003,055**	**£ 1,652,614**

Figure 2 Bulking, haulage and MRF costs 2014 – 2019



1.5 According to the Waste and Resources Action Programme (WRAP) the median processing gate fee paid by local authorities sent to Material Recycling Facilities increased by 47% in 2017/2018, with processing gate fees in the West Midlands ranging between £57 and £86 per tonne. In 2018/19 the average processing cost per tonne paid by CCC was £62.37.

1.6 The current contractual arrangements expire in September 2019. Members have previously approved that officers enter into a tender process which is currently underway, to secure a new supplier(s) on a 2-year fixed term, with a further 4 x 12-month extension periods. Pre-tender research indicated that an anticipated increased processing gate fee return in the region of £65-£70 per tonne should be expected. Further engagement with the market has indicated that the processing gate fee for any short-term arrangement would be potentially even higher in the region of £90 per tonne.

1.7 In addition, waste is currently bulked at a facility operated by Tom White Waste, before onward transportation to the Materials Recycling Facility at a cost of £24.79 per tonne. This will continue to rise by inflation and other market factors.

1.8 The total cost to Coventry in 2018/19 for the bulking, haulage and treatment of kerbside collected dry mixed recyclate (dry mixed recyclate) was in excess of £1.6million.

1.9 Project Aspirations:

1.10 Current Materials Recycling Facility arrangements (including processing gate fees and rebate share mechanisms) are reflective of the private sector's reluctance to absorb the risk of current market price fluctuations.

1.11 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.

1.12 The development of an 'in-house' Materials Recycling Facility will allow the Partner Councils to take control of processing dry mixed recyclate collected through kerbside collections and via Household Waste and Recycling Centres (HWRC). This will allow each Partner Council to benefit more fully from any 'upside' of the price of processed recyclate in the commodity market in consideration for the risks they are required to assume in any event.

1.13 The Business Case sets out the Projects 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 Materials Recycling Facility;
- Avoid paying risk premiums to the private sector to offset market fluctuations;
- Future proof the Materials Recycling Facility 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

1.14 Waste Tonnage, Composition and Characteristics:

1.15 The Business Case assumes Partner Councils to be the primary feedstock supplier and considers anticipated waste growth associated with increases in housing.

1.16 In addition, Government are currently considering the national strategy for waste management. Members will be aware from media coverage that this includes the potential for greater producer responsibility and the introduction of deposit schemes for certain materials, e.g. plastic bottles. The business case Business Case deals sufficiently with these levels of future uncertainty around the exact composition of the recyclate collected by the Partner Councils.

1.17 The Basecase for the Project is set at 87,000 tonnes per annum in year 1, rising to 116,000 tonnes per annum over the long-term operation of the Materials Recycling Facility as outlined in Table 2. 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 2 Partner Council feedstock tonnages

Table 2: 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
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
Walsall Council	22,049	24,200	30,500
Total	**87,126**	**94,350**	**116,200**

1.18 Existing arrangements by Partner Councils who currently undertake the separate collection of paper and/or glass have been considered and cost implications included with the Business Case.

1.19 <u>Facility Technology Design:</u>

1.20 The composition and characteristics of Partner Council feedstock has been used to inform the technology solution required for the Materials Recycling Facility 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.

1.21 The Business Case sets out the outline design and technology configuration which would enable the facility to extract high quality r 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 etc).
- 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

1.22 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.

1.23 The Materials Recycling Facility will be designed 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.

1.24 Proposed site:

1.25 It is intended that the Materials Recycling Facility will be situated 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 site has been designated as suitable for use associated with the treatment of waste in the Local Plan and is currently owned by CCC.

1.26 An independent evaluation of the rental value of the land of the purpose of the use for a waste processing facility was undertaken in the Summer of 2018. The lease agreement will be subject to a formal evaluation and be agreed in accordance with Section 123 (1) of the Local Government Act.

1.27 Project Commercials and Development Costs:

1.28 The Business Case has been developed with the Materials Recycling Facility operating as a 'standalone' Project to support the Partner Councils in the treatment of dry mixed recyclate. The Basecase costs assume full operational cost recovery of the Materials Recycling Facility (including financing costs) through a processing gate fee charged to each Partner Council that would be lower than is currently paid in the market. 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. The modelling and financial benefits in this report assume no third-party benefits at this stage.

1.29 The share of the capital contribution has been structured to align with the 2018/19 recyclate tonnages for each Partner Council. This means that the level of interest in the Project, the capital input, and therefore the loan benefit, is commensurate to the relative input to the facility. The section 'Project Structure' Section 1.35 below provides further information on this structure.

1.30 The addition of any further Partnership Councils would be subject to an analysis and would only be able to join the Joint Working Agreement 2 if each Partner Council position is not negatively impacted. Additional Partner Councils would further de-risk the Project, reduce the processing cost and therefore further improve savings to disposal costs.

1.31 Coventry Financial Position – Waste Management Budget:

1.32 The cost to Coventry in 2018/19 for the disposal of dry mixed recyclate collected was £1.6million, inclusive of the costs of bulking, haulage and processing, and any rebate revenue share achieved.

1.33 It should be noted that the current Coventry Materials Recycling Facility contract expires in September 2019. It is anticipated that the future processing gate fee at a Materials Recycling Facility and any bulking and haulage costs are anticipated to increase. Based on market research this would see an additional pressure on existing disposal budgets in the region of c.£200,000 per year.

1.34 The volatility of market values and risk being passed by the private sector has seen the cost of processing dry mixed recyclate move by c.£1.2million per year during the last 5 years (see Table 1). The Project would offer greater security to the Council with a secure Materials Recycling Facility outlet and budgetary management over the 20-year period.

1.35 Coventry Financial Position – Sensitivities:

1.36 Sensitivities have been run in relation to the following:

- variants in Commercial and Industrial (C&I) (third party) feedstock supply achieved
- the volatility of market values of recyclate
- increases in capital and operational costs
- the addition of other Partnership Councils

1.37 These sensitivities modelled are described and presented further in the financial implications section of this report.

1.38 Project Structure:

1.39 The proposed Project structure has been guided by external legal advisors, Pinsent Mason, and would seek to establish a parent Asset Company (AssetCo), to which each Partner Council will be a shareholder. The shareholding arrangement will be aligned to tonnage throughput, based on 2018/19 dry mixed recyclate collected by each Partner Council.

1.40 Prior to the establishment of the AssetCo, each Partner Council will be bound by a Joint Working Agreement (2) which sets out the principals for joint working and funding contributions towards the development of the Project.

1.41 The Joint Working Agreement (2) commits the Partner Councils to work together to undertake the procurement of any contract(s) in relation to the development of the facility. Through the Joint Working Agreement (2) Partner Councils 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 they are committed to funding the Project and entering into the Shareholders Agreement for AssetCo provided that the Business Case remains viable.

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

- Wardell Armstrong LLP to act as its technical consultant and assistant Project Manager
- KPMG to act as its financial consultant; and
- Pinsent Mason LLP to act as its legal consultant

1.43 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. CCC will act as the Lead Authority during the procurement stage of the Project.

1.44 Following the satisfactory conclusion (i.e. the Business Case remains viable after tendered costs have been received) of the procurement phase, each Partner Council will agree to enter into the Shareholder's Agreement to establish AssetCo to act as the principal contracting entity/delivery vehicle for the Project and enter into Principal Contracts(s).

1.45 The Joint Working Agreement (2) acknowledges and agrees the overall Project budget, and commitment to the procurement phase budget. Each Partner Council contribution value is equal to its respective tonnage input.

1.46 Withdrawal from the Joint Working Agreement (2) for any Partner Council is subject to them meeting their financial commitments up to financial close, and it is evidenced that the overall project is no longer viable for that Partner Council. The initial drafting of Joint Working Agreement (2) allows for additional local authorities to join the Project as Partner Councils prior to the completion of Joint Working Agreement (2). This would only be allowed if the savings to each of the Partner Councils was greater than those achieved in the Basecase.

1.47 <u>Procurement Approach:</u>

1.48 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 Councils Contract for Procedural Rules, using the Competitive Dialogue Procedure.

1.49 Engagement through soft market testing with the market and technology suppliers has shown there is considerable interest in the Project and has informed the procurement approach..

1.50 Project Failure:

1.51 Should the Project fail during the procurement phase each Partner Council will agree to reimburse the procuring authority the balance of its proportion of the procurement phase budget. For the avoidance of doubt, this means that Coventry would only be liable for its own abortive costs.

1.52 The current tender arrangements for the processing and treatment of dry mixed recyclate collected from households within Coventry has been designed to give the flexibility to conclude in line with the projected commissioning of the Materials Recycling Facility or extend beyond should the Project close during the procurement phase.

1.53 If through the Procurement Phase the Project no longer benefits any one Partner Council then the Project would need to be reviewed for viability for all remaining Partner Councils and any implications to a robust Business Case mitigated where possible. If the Project remains unviable then it will be aborted. This would be a decision of Project Board and Members at each Partner Council.

2 Options considered and recommended proposal

2.1 **Option 1.** Do Nothing

2.2 The Council will continue to source treatment of dry mixed recyclate through traditional contractual arrangements with the private sector.

2.3 Evidence in the region, including direct experience by CCC, has shown that the private sector is demanding higher prices (gate fees) and operating financial margins to protect themselves against market risks, however when change does occur, the public sector takes the financial pressure through further price implications. Based on market research it is anticipated that the costs will increase c.£200,000 a year for the treatment of dry mixed recyclate as result on a new contract being awarded in September 2019.

2.4 **Option 2** Development of a Materials Recycling Facility with Partner Councils.

2.5 Approval of the Business Case for the development of a Materials Recycling Facility with Partner Councils which will require significant capital investment by Coventry City Council. In return greater levels of control for the sorting, marketing and sale of dry mixed recyclate and the management of risks associated with market fluctuations could be achieved.

2.6 Should the Business Case be approved, the next steps for the Project would be;

- For each Partner Council to confirm the Project viability, and obtain Council approval to engage in the Joint Working Agreement (2), commence procurement, and establish the Shareholder Agreement and AssetCo;
- Further develop the detailed procurement documentation and obtain delegation of authority to the Deputy Chief Executive (Place) to engage into the procurement phase and OJEU notification in September following approval of the Business Case by all Partner Councils;

- Conclude time sensitive and seasonal of ecology, ground conditions, traffic studies etc allowing for work to begin on site in Spring/Summer 2020;

2.7 **Option 2** is therefore the recommended option.

3 Results of consultation undertaken

3.1 No consultation undertaken.

4 Timetable for implementing this decision

4.1 The procurement will 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 Rules, using the Competitive Dialogue Procedure.

4.2 Below is an indicative timetable for procurement subject to Business Case approval by all Partner Council by September 2019.

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

5 Comments from Director of Finance and Corporate Services

5.1 Financial Implications

5.1.1 Project Commercials and Development Costs:

5.1.2 The Business Case has been developed with the Materials Recycling Facility operating as a 'standalone' Project to support the Partner Councils in the treatment of dry mixed recyclate. The Basecase costs assume full operational cost recovery of the Materials Recycling Facility (including financing costs) through a processing gate fee charged to each Partner Council that would be lower than is currently paid in the market. 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. The modelling and financial benefits in this report assume no third-party benefits at this stage.

5.1.3 The share of the capital contribution has been structured to align with the 2018/19 recyclate tonnages for each Partner Council. This means that the level of interest in the Project, the capital input, and therefore the loan benefit, is commensurate to the relative input to the facility. The section 'Project Structure' Section 1.38 above provides further information on this structure.

5.1.4 Coventry Financial Position – Waste Management Budget:

5.1.5 The cost to Coventry in 2018/19 for the disposal of dry mixed recyclate collected was £1.6million, inclusive of the costs of bulking, haulage and processing, and any rebate revenue share achieved.

5.1.6 It should be noted that the current Coventry Materials Recycling Facility contract expires in September 2019. It is anticipated that the future processing gate fee at a Materials Recycling Facility and any bulking and haulage costs are anticipated to increase. Based on market research this is expected to be an additional pressure on disposal budgets of c.£200,000.

5.1.7 The volatility of market values and risk being passed by the private sector has seen the cost of processing dry mixed recyclate move by c.£1.2million per year during the last 5 years (see Table 1). The Project would offer greater security to the Council with a secure Materials Recycling Facility outlet and budgetary management over the 20-year period.

5.1.8 Coventry Financial Position – Sensitivities:

5.1.9 Assumptions within the models have been robustly tested throughout the development of the business case and market tested, where appropriate. Sensitivities have been run against the base case financial implications in relation to the following project changes:

- variants in Commercial and Industrial (C&I) (third party) feedstock supply achieved
- the volatility of market values of recyclate
- increases in capital and operational costs
- the addition of other Partnership Councils

5.2 **Legal implications**

5.2.1 Procurement

5.2.2 A Full OJEU procurement process will be undertaken in accordance with the Public Contract Regulations 2015 due to the value using the Competitive Dialogue process.

5.2.3 The Appendix 4 provided has been produced by Pinsent Masons who has advised the Partner Councils on the structure proposed for AssetCo. The advice sets out how Partner Councils can send its waste using a Service Level Agreement to AssetCo in a procurement compliant manner.

5.2.4 The Partner Councils have a duty as part of the Waste Regulations 2011 to separately collect four types of recyclable material (glass, metal, paper and plastic) and to ensure that collection methods pass Necessity and Practicability (TEEP) tests as well as following requirements regarding the waste hierarchy. The Waste Regulations transpose the Waste Framework Directive into UK law and are enforced in England by the Environment Agency.

5.2.5 Under Section 12 of the Local Government Act 2003 the Council has a specific power to invest. The power states "a local authority may invest for any purpose relevant to its functions under any enactment or for the purposes of the prudent management of its financial affairs". This provides the Council with a power to invest in AssetCo, for any purpose relevant to its functions (this function would have to be identified) or if the Council can show it is for the prudent management of its financial affairs. Under section 1 of the Localism Act 2011, the Council also has a power “to do anything that individuals generally may do” (the “General Power of Competence”). “Individual” means an individual with full capacity. The General Power of Competence gives the Council:

i. power to do a thing anywhere in the United Kingdom or elsewhere,
ii. power to do it for a commercial purpose or otherwise for a charge, or without charge, and
iii. power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

5.2.6 Where the Council uses the General Power of Competence to do something for a commercial purpose, section 4 of the Localism Act 2011 requires that the Council must do so through a company (which has a wider definition than for the purposes of section 95 Local Government Act 2003).

5.2.7 The requirement under section 4 of the Localism Act 2011 is very similar to the requirements of section 95 of the Local Government Act 2003 (the "trading power"). The Council will be compliant with the requirements of both the General Power of Competence and the trading power as any commercial purpose activity or trading will be done through AssetCo. This report serves as a business case for the proposed investment in the company and the proposed trading through that company following the share purchase.

5.2.8 The General Power of Competence is limited by any restrictions on any pre-existing powers of the Council. The General Power of Competence can be used in conjunction with existing powers, for example the section 95 trading power.

5.2.9 If the Council is considering providing any services directly to AssetCo, for example a contract to provide back office support such as payroll, it can use the "incidental power" under section 111 of the Local Government Act 1972, which enables it to "to do anything (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" (its function in this case being the General Power of Competence).

5.3 **State Aid**

5.3.1 Article 107 (1) of the Treaty on the Functioning of the European Union ("Treaty") states"…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."

5.3.2 The Treaty does not define in any more detail what constitutes state aid. However, the term has been interpreted to include the provision of grants, loans on favourable terms, the transfer of assets at less than the market rate, and tax advantages. Not all state aid is unlawful, and it is possible to justify some types of financial assistance under pre - approved mechanisms.

5.3.3 It is possible that a third party (and/or European Commission) who has not received state aid could bring legal proceedings in the UK courts for damages. Such a claim could, for example, be brought by a competitor who feels it has suffered loss because it has not been given aid.

5.3.4 A recipient can be ordered to repay all aid received over a ten-year period if the European Commission finds it has been provided unlawfully. It is no defence that repayment may force the recipient into insolvency.

5.3.5 Market Economy Investor Principle ("MEIP") can provide an appropriate mechanism to potentially justify aid to any third party following the Council's loan. A Loan does not automatically constitute state aid if the Council carries out prior due diligence that demonstrates that investments are likely to generate sufficiently high returns and that a private prudent investor would have made the same investment. i.e. the Council can invest in the proposal in return for an appropriate commercial return which would satisfy the expectations of a private prudent investor.

5.3.6 The risk of state aid is not dependent upon whether the financial return is actually ever achieved by the Council, as whether state aid exists or not is assessed at the time of the funding advanced, but there must be a realistic prospect of the financial return being achieved by the Council.

5.3.7 The Partner Councils is currently seeking advice from Financial Advisors (KPMG) to ascertain whether the MEIP analysis would satisfy the expectations of a private prudent investor. If the MEIP test is satisfied on the basis of the commercial return agreed, then the potential for any state aid argument will be mitigated. In practice the Council would need to rely on the MEIP analysis as a justification for any state aid in the event of a complaint, challenge or investigation. The initial advice has been to make the Loan at a minimum of 6.1%. However, this will be subject to an independent report which will verify that that the 6.1% is in compliance with the MEIP test. Any significant changes to the 6.1% will be reported to the Cabinet Member for Business, Enterprise and Employment, the Executive Director of Place and Executive Director of Resources.

5.4 **Best Consideration**

5.4.1 The Council has the general power under section 123(1) of the Local Government Act 1972 to dispose of land and property in any manner it wishes. The Secretary of State's consent is not required provided the disposal is for the best consideration that can reasonably be obtained. The lease entered into will discharge this obligation.

6 Other implications

6.1 **How will this contribute to achievement of the Council's Plan (www.coventry.gov.uk/councilplan/)?**

6.2 In accordance with the Environmental Protection Act 1990 the Council has a legal obligation to undertake collections of household waste, including the separate collection of waste paper, metal, plastic and glass (The Waste (England and Wales) (Amended) Regulations 2012).

6.3 The Councils Municipal Waste Strategy 2008-2020 outlines the Councils approach to meeting legal obligations and recycling targets set out in the Waste Strategy for England 2007. Namely, 45% of household waste arising to be recycled by 2020.

6.4 **How is risk being managed?**

6.5 The premise of the Project is to better manage the risks ~~as~~ of costs associated with the treatment of dry mixed recyclate arising in the region and particularly in Coventry.

6.6 This notwithstanding, as with any construction project there are risks that are required to be managed effectively for the project to remain deliverable.

- A competent, professional and well-resourced project team has been established 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 exit clauses from the Joint Working Agreement (2) agreement if the Project is subsequently deemed unaffordable
- Planning risk is being managed, with early planning being sought to prevent cost impacts post-Financial Close

6.7 The scheme involves giving a loan to the delivery company. As with all loans, there is a risk of default however, the shares of the company will be exclusively owned by Coventry City Council and its Local Authority partners, and its customers will be the same authorities (in the base case) plus potentially others committing its recyclate feedstock to the plant on a long-term basis which reverses 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. Feedstock/demand is however as described in the report, expected to increase over time rather than reduce which reduces this risk.

6.8 The loan/investment has been considered within the context of the Council's commercial investment strategy which takes account of both the risk of each investment made and the limits set for loans of this nature in totality. The loan proposed in this report is within the headroom currently afforded in the strategy.

6.9 **What is the impact on the organisation?**

6.10 None, there will be no direct impact as the facility will be operated by AssetCo.

6.11 **Equalities / EIA**

6.11.1 No formal equalities impact assessment has been carried out. However, it is not expected that there will not be any disadvantage to any group if the recommendation is approved.

6.12 **Implications for (or impact on) climate change and the environment**

6.13 The Waste Strategy for England 2007 outlines the Governments ambition to work towards a zero-waste economy, in which material resources are reused, recycled or recovered wherever possible and only disposed of as the option of last resort. This means reducing the amount of waste produced and ensuring all material are pushed up the waste hierarchy. The benefits will be realised in a healthier natural environment and reduce the impacts on climate change.

6.14 The proposed location will eliminate the current need to bulk and haul dry mixed recyclate collected in Coventry. A reduction in CO2 emissions will be achieved through reducing vehicle movements by collection crews, and articulated lorry movements (c.25 per week, c.1,300 per year) associated with transporting materials to the current Material Recycling Facility, in London.

6.15 **Implications for partner organisations?**

6.16 Benefits to all Partner Council will achieved through greater levels of control over the sorting, marketing and sale of dry mixed recyclate collected at the kerbside, increase flexibility and management of risks associated with market fluctuations directly.

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