

# Agenda

## Waste Credit Governance Committee

**Thursday, 29 September 2016, 10.00 am**  
**County Hall, Worcester**

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ਪੰਜਾਬੀ। ਜੇ ਤੁਸੀਂ ਇਸ ਦਸਤਾਵੇਜ਼ ਦਾ ਮਸ਼ਹੂਰ ਸਮਝ ਨਹੀਂ ਸਕਦੇ ਅਤੇ ਕਿਸੇ ਅਜਿਹੇ ਵਿਅਕਤੀ ਤੱਕ ਪਹੁੰਚ ਨਹੀਂ ਹੈ, ਜੋ ਇਸਦਾ ਤੁਹਾਡੇ ਲਈ ਅਨੁਵਾਦ ਕਰ ਸਕੇ, ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ ਮਦਦ ਲਈ 01905 765765 'ਤੇ ਫ਼ੋਨ ਕਰੋ। (Punjabi)

# DISCLOSING INTERESTS

There are now 2 types of interests:  
**'Disclosable pecuniary interests'** and **'other disclosable interests'**

## WHAT IS A 'DISCLOSABLE PECUNIARY INTEREST' (DPI)?

- Any **employment**, office, trade or vocation carried on for profit or gain
- **Sponsorship** by a 3<sup>rd</sup> party of your member or election expenses
- Any **contract** for goods, services or works between the Council and you, a firm where you are a partner/director, or company in which you hold shares
- Interests in **land** in Worcestershire (including licence to occupy for a month or longer)
- **Shares** etc (with either a total nominal value above £25,000 or 1% of the total issued share capital) in companies with a place of business or land in Worcestershire.

**NB Your DPIs include the interests of your spouse/partner as well as you**

## WHAT MUST I DO WITH A DPI?

- **Register** it within 28 days and
- **Declare** it where you have a DPI in a matter at a particular meeting
  - you must **not participate** and you **must withdraw**.

**NB It is a criminal offence to participate in matters in which you have a DPI**

## WHAT ABOUT 'OTHER DISCLOSABLE INTERESTS'?

- No need to register them but
- You must **declare** them at a particular meeting where:  
You/your family/person or body with whom you are associated have a **pecuniary interest** in or **close connection** with the matter under discussion.

## WHAT ABOUT MEMBERSHIP OF ANOTHER AUTHORITY OR PUBLIC BODY?

You will not normally even need to declare this as an interest. The only exception is where the conflict of interest is so significant it is seen as likely to prejudice your judgement of the public interest.

## DO I HAVE TO WITHDRAW IF I HAVE A DISCLOSABLE INTEREST WHICH ISN'T A DPI?

Not normally. You must withdraw only if it:

- affects your **pecuniary interests OR** relates to a **planning or regulatory** matter
- **AND** it is seen as likely to **prejudice your judgement** of the public interest.

## DON'T FORGET

- If you have a disclosable interest at a meeting you must **disclose both its existence and nature** – 'as noted/recorded' is insufficient
- **Declarations must relate to specific business** on the agenda
  - General scattergun declarations are not needed and achieve little
- Breaches of most of the **DPI provisions** are now **criminal offences** which may be referred to the police which can on conviction by a court lead to fines up to £5,000 and disqualification up to 5 years
- Formal **dispensation** in respect of interests can be sought in appropriate cases.

**Waste Credit Governance Committee**  
**Thursday, 29 September 2016, 10.00 am, County Hall,**  
**Worcester**

**Membership:** Mr P Grove (Chairman), Mr L C R Mallett (Vice Chairman),  
Mr R C Adams, Mrs S Askin, Mr R W Banks, Mr P Denham,  
Mr A I Hardman and Mr P A Tuthill

**Agenda**

<b>Item No</b>	<b>Subject</b>	<b>Page No</b>
1	<b>Apologies and Named Substitutes</b>	
2	<b>Declarations of Interest</b>	
3	<b>Public Participation</b> Members of the public wishing to take part should notify the Head of Legal and Democratic Services in writing or by email indicating the nature and content of their proposed participation no later than 9.00am on the working day before the meeting (in this case 28 September 2016). Further details are available on the Council's website. Enquiries can be made through the telephone number/e-mail below.	
4	<b>Confirmation of Minutes</b> To confirm the Minutes of the meeting held on 29 July 2016. (previously circulated – pink pages)	
5	<b>Actual construction period cash flow test</b>	1 - 16
6	<b>Progress summary from technical advisors</b>	17 - 20
7	<b>Risk Register</b>	21 - 28
8	<b>Waivers/consents</b>	29 - 30

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To obtain further information or a copy of this agenda contact Simon Lewis, Committee Officer on 01905 846621, slewis@worcestershire.gov.uk

All the above reports and supporting information can be accessed via the Council's website

Date of Issue: Tuesday, 20 September 2016

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**WASTE CREDIT GOVERNANCE COMMITTEE**  
**29 SEPTEMBER 2016****ACTUAL CONSTRUCTION PERIOD CASH FLOW TEST**

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**Recommendation**

- 1. The Chief Financial Officer recommends that:**
  - a) The result Actual Construction Period Cash Flow Test be accepted.**
  - b) The Committee consider whether to report any matters to Council.**

**Introduction**

2. The Actual Construction Period Cash Flow Test (ACPCFT) is prepared by Mercia Waste Management on a quarterly basis and reviewed by Deloitte, acting in the capacity as Financial Advisers to the Councils in relation to the Senior Term Loan Facilities Agreement (STFLA), to determine whether:

“Actual Operating Cash generated during that period plus the brought forward cash balance attributable to operations is equal to, or exceeds... the amount of Operating Cash projected to be generated during that period plus the brought forward cash balance attributable to operations as shown in the Base Case Financial Model.”

**Review performed by Deloitte**

3. In performing the review Deloitte have agreed the terms of the calculation to the STLFA:
  - Agreed the “model” Operating Cash generated during the period to the Base Case Financial Model
  - Agreed the actual Operating Cash generated during the period to management information
  - Re-performed the calculation of the ACPCFT
  - Compared the senior term loan facility drawdowns against those forecast in the Base Case Financial Model.

**Summary of Results**

4. The result of the ACPCFT performed by Mercia for the period under review is an Excess Cash Flow amount as at 30 June 2016 of 397k. The result shows that in the period from 1 May 2014 to 30 June 2016, the operations have produced £397k more than was forecast for this period in the Base Case Financial Model.
5. Based on this result the ACPCFT for the period under review is satisfied.

## **Contact Points**

### County Council Contact Points

County Council: 01905 763763

Worcestershire Hub: 01905 765765

Email: [worcestershirehub@worcestershire.gov.uk](mailto:worcestershirehub@worcestershire.gov.uk)

### Specific Contact Points for this report

Sean Pearce – Chief Financial Officer

Tel: 01905 766268

Email: [spearce@worcestershire.gov.uk](mailto:spearce@worcestershire.gov.uk)

## **Supporting Information**

- Appendix 1 – Actual Construction Period Cash Flow Test
- Appendix 2 – Timetable for the production and review of the Actual Construction Period Cash Flow Test.

## **Background Papers**

In the opinion of the proper officer (in this case the Chief Financial Officer) there are no background papers relating to the subject matter of this report.



# **Senior Term Loan Facility Agreement**

## Actual Construction Period Cash Flow Test

For the period:  
01 April 2016 to 30 June 2016

# Important notice

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# Actual Construction Period Cash Flow Test

## Background

Mercia has a Waste Management Services Contract ("WMSC") with the Councils. Mercia secured planning consent for a new facility and re-negotiated the WMSC for the design, construction and operation of a Waste to Energy ("WtE") plant over the remainder of the WMSC, due to expire in 2023. Financial close was reached in May 2014.

In order to ensure the funding solution demonstrated Value for Money ("VfM"), the Councils used their Prudential borrowing powers to debt fund Mercia's WtE Plant.

Based on a capital structure of 85% debt and 15% equity, the Councils issued a senior loan facility.

Within the Senior Term Loan Facility Agreement ("STLFA"), the Councils included an Actual Construction Period Cash Flow Test ("ACPCFT"). This test is carried out on a quarterly basis following financial close (the first quarter ending 30 September 2014) and is used to determine whether:

"Actual Operating Cash generated during that period plus the brought forward cash balance attributable to operations is equal to, or exceeds... the amount of Operating Cash projected to be generated during that period plus the brought forward cash balance attributable to operations as shown in the Base Case Financial Model."

Should a shortfall occur, Mercia will be required to remedy this shortfall by means of an equity injection equal to the amount of the shortfall in accordance with the contractual documentation.

Source: Mercia; Financial Model; Senior Term Loan Facility Agreement.

## Scope of review

Deloitte has reviewed the calculation provided by Mercia for the ACPCFT. In doing so Deloitte has:

- Agreed the terms of the calculation to the STLFA;
- Agreed the "model" Operating Cash generated during the period to the Base Case Financial Model;
- Agreed the actual Operating Cash generated during the period to management information;
- Re-performed the calculation of the ACPCFT; and
- Compared the senior term loan facility draw downs against those forecast in the Base Case Financial Model.

We have not received any technical reports for the period to 30 June 2016.

## Summary of results

The result of the ACPCFT performed by Mercia for the period under review is an Excess Cash Flow amount as at 30 June 2016 of £397k, which has increased by £20k from the Cash Flow flow test in the previous period.

This shows that from 1 May 2014 to 30 June 2016, the operations have produced £397k more than was forecast in the Base Case Financial Model, which is a further increase in Excess Cash Flow from Q1 2016, following four consecutive periods of under-performance against the modelled forecast, up to and including Q4 2015.

Based on the above, the ACPCFT for the quarterly period under review would be satisfied. In completing our work set out above, we have not identified any inconsistencies between Mercia's calculation and the underlying information.

# Calculation

## Actual Construction Period Cash Flow Test

Metric (£000)	May – Sep 14	Oct – Dec 14	Jan - Mar 15	Apr - Jun 15	Jul - Sep 15	Oct - Dec 15	Jan - Mar 16	Apr - Jun 16
<b>Base case financial model</b>								
<i>b/f cash attributable to Ops</i>	4,254	4,793	7,051	9,123	11,246	13,203	15,388	17,482
Gross revenue	18,603	10,448	10,847	11,813	12,374	10,627	11,140	12,046
Operating costs	(14,893)	(8,111)	(8,320)	(8,961)	(9,253)	(8,590)	(8,821)	(9,439)
Changes in working capital	(1,212)	320	(18)	(252)	(37)	451	138	134
Cell preparation assets	(612)	0	0	0	(632)	0	0	0
Corporation tax	(1,346)	(400)	(437)	(477)	(494)	(303)	(363)	(423)
<b>Total change</b>	<b>539</b>	<b>2,258</b>	<b>2,072</b>	<b>2,122</b>	<b>1,957</b>	<b>2,185</b>	<b>2,094</b>	<b>2,319</b>
<i>c/f cash attributable to Ops</i>	<b>4,793</b>	<b>7,051</b>	<b>9,123</b>	<b>11,246</b>	<b>13,203</b>	<b>15,388</b>	<b>17,482</b>	<b>19,801</b>
<b>Actuals</b>								
<i>b/f cash attributable to Ops</i>	4,637	6,480	11,674	10,423	12,333	14,218	15,655	17,860
<i>Gross revenue</i>	19,688	13,341	10,578	11,929	12,091	10,523	11,091	13,078
Operating costs	(15,557)	(8,588)	(8,509)	(9,372)	(9,682)	(8,916)	(9,245)	(9,812)
Changes in working capital	(1,392)	1,363	(3,018)	(171)	(131)	(341)	358	(928)
Cell preparation assets	(333)	(286)	0	0	(189)	0	0	0
Corporation tax	(563)	(636)	(302)	(476)	(204)	171	0	0
<b>Total change</b>	<b>1,843</b>	<b>5,194</b>	<b>(1,252)</b>	<b>1,910</b>	<b>1,885</b>	<b>1,437</b>	<b>2,204</b>	<b>2,338</b>
<b>Variance</b>	<b>1,304</b>	<b>2,936</b>	<b>(3,324)</b>	<b>(212)</b>	<b>(72)</b>	<b>(748)</b>	<b>110</b>	<b>20</b>
Excess cash flow a/c b/f	383	1,687	4,623	1,299	1,087	1,015	267	377
<b>Excess cash flow a/c c/f</b>	<b>1,687</b>	<b>4,623</b>	<b>1,299</b>	<b>1,087</b>	<b>1,015</b>	<b>267</b>	<b>377</b>	<b>397</b>

# Commentary

## Summary

- The calculation is the result of a methodology agreed between parties (the Councils and Mercia) as per the STLFA signed on 21 May 2014.
- The outcome of the ACPCFT performed by Mercia for the quarter under review is an Excess Cash Flow amount of £397k.
- The period from 1 May 2014 to 30 June 2016, the operations have produced £397k more Excess Cash Flow than was forecast for this period in the Base Case Financial Model.
- We note that in the period there has been an over performance against the Base Case Financial Model of £20k, following four consecutive periods of under-performance against the modelled forecast up to and including Q4 2015.
- Based on the above, the ACPCFT for the period under review is satisfied. We have not identified any inconsistencies between Mercia's calculation and the underlying information.
- Following four consecutive quarterly periods of under-performance against the modelled forecast, it has been noted that there has now been two successive quarters of over-performance, with an increase in Excess Cash Flow of £20k in Q2 2016 following an increase of £110k in the previous quarter.
- The increase in the Excess Cash Flow amount has been principally driven by favourable movements of £1,032k in gross revenue and £423k in corporation tax compared to modelled forecast, offset by higher opex and an adverse working capital movement.
- From a discussion with Mercia on 6 September 2016, the over performance of revenue and higher operating costs reflects greater recyclable volumes in the period. During the period aspects such as the glass breakers have been working as expected, therefore not incurring third party processing costs.

Source: Mercia; Financial Model; Senior Term Loan Facility Agreement.

## Revenue up and operating costs up against modelled forecast

- We note that for the quarter under consideration, revenue actuals were 9% above the modelled forecast, and operating costs 4% above the modelled forecast.
- Over performance of revenue has been driven by increasing recyclable volumes and a further stabilisation of recyclable prices in the period.
- From a discussion with Mercia on 6 September, increased operating costs are a reflection of increased volumes processed during the period and the site operating efficiently, reducing third party processing costs.

## Changes in working capital and corporation tax

- The increase in the Excess Cash Flow amount has been principally driven by favourable movements in Gross Revenue and the position achieved in respect of corporation tax, reflective of favourable positions on deductions and allowances compared to the modelled forecast.
- The adverse movement in working capital in the period is a reflection of increasing trade debtors compared to the modelled forecast, driven in part by the seasonality of increased recyclable volumes.

# Commentary (continued)

## ACPCFT trend

- It has been noted that whilst the Excess Cash Flow amount is still positive at £397k (an increase of £20k from the previous period), prior to Q1 2016 there were four consecutive periods of under-performance against the modelled forecast (i.e. a negative variance of actuals against the model).
- Mercia stated that recyclable materials pricing has seen further stabilisation and some small increases in some recyclables pricing, though Deloitte has not validated this.
- As a result of these factors, operational improvements and the Deed of Rectification, Mercia is projecting a stable or increased Excess Cash Flow Account for the next quarter.
- As a result, Mercia believes that there is no cause for concern with regards to the ACPCFT trend over 2016.
- In any case, should the ACPCFT be failed in subsequent quarters, the process to resolve this has been extracted and included in Appendix 2.

# Senior Term Facility Loan draw downs

## Actuals vs Forecast in the Financial Model

The table below shows the actual Senior Term Facility Loan draw downs against those forecast in the financial model.

Model	May - Sep 14	Oct - Dec 14	Jan - Mar 15	Apr - Jun 15	Jul - Sep 15	Oct - Dec 15	Jan - Mar 16	Apr - Jun 16	Cumulative
<b>Model</b>									
Facility A	5,241	2,341	1,725	5,633	3,205	4,249	2,355	2,448	<b>27,197</b>
Facility B	18,898	8,426	6,190	20,288	11,490	15,241	8,382	8,699	<b>97,614</b>
<b>Total</b>	<b>24,139</b>	<b>10,767</b>	<b>7,915</b>	<b>25,921</b>	<b>14,695</b>	<b>19,490</b>	<b>10,737</b>	<b>11,147</b>	<b>124,811</b>
<b>Actual</b>									
Facility A	4,576	-	1,713	2,375	3,289	4,746	5,180	5,626	<b>27,505</b>
Facility B	16,532	-	6,187	8,581	11,883	17,145	18,715	20,324	<b>99,367</b>
<b>Total</b>	<b>21,108</b>	<b>-</b>	<b>7,900</b>	<b>10,956</b>	<b>15,172</b>	<b>21,891</b>	<b>23,895</b>	<b>25,950</b>	<b>126,872</b>
<b>Difference</b>	<b>(3,031)</b>	<b>(10,767)</b>	<b>(15)</b>	<b>(14,965)</b>	<b>477</b>	<b>2,401</b>	<b>13,158</b>	<b>14,803</b>	<b>2,061</b>

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Facility A is the amortising loan. Capital repayments begin in the quarter ending 30 June 2017 following the end of the construction period. Facility B is the bullet loan which is forecast to be repaid in the quarter ending 31 December 2023.

From discussions with Mercia management, the lack of a draw down in the quarter 1 October 2014 to 31 December 2014 reflects both a delay in the WtE build (meaning less cash was required for the WtE build) and the lower-than-expected capital expenditure in non-WtE build (meaning that more of the cash can be used on the WtE build).

From discussions with Mercia management, the draw downs against the facilities are again higher in Q2 2016 compared to the modelled forecast as a result of a number of EPC milestones being achieved earlier than modelled. As such there has been an increase in draw downs compared to the modelled forecasts as Mercia prepares for takeover.

# Appendix 1

## Mercia's calculation (£000)

	1 Apr 16 to 30 Jun 16 ACTUAL	1 Apr 16 to 30 Jun 16 MODEL
<b>Profit Before Depreciation and Tax</b>	<b>3,266</b>	<b>2,607</b>
<b>Working Capital Movement (Operating)</b>	<b>-928</b>	<b>134</b>
Corporation Tax (Cash)	-	-423
<b>Operating Cash Flow</b>	<b>2,338</b>	<b>2,319</b>

Excess Cash Flow	1 Apr to 30 Jun 2016		
	Actual	Model	Var
Operating Cash Opening Balance	17,860	17,482	377
Operating Cash Flow (as above)	2,338	2,319	20
<b>Operating Cash Closing Balance</b>	<b>20,198</b>	<b>19,801</b>	<b>397</b>

## Mercia's cash flow notice

<i>Excess Cash – Opening Balance (Mar 2016)</i>	377
<i>Gross Revenue</i>	+1,032
<i>Operating Costs</i>	-407
<i>Changes in Working Capital</i>	-1,028
<i>Corporation Tax</i>	+423
<i>Total</i>	+20
<i>Excess Cash – Closing Balance (Jun 2016)</i>	397

# Appendix 2

## Extracts from Senior Term Loan Facility Agreement

**“Actual Construction Period Cash Flow Test”** means the quarterly test to be carried out on each Actual Construction Period Cash Flow Testing Date, in relation to the preceding quarter to determine whether: actual Operating Cash generated during that period plus the brought forward cash balance attributable to operations is equal to, or exceeds the amount of Operating Cash projected to be generated during that period plus the brought forward cash balance attributable to operations as shown in the Base Case Financial Model;

**“Actual Construction Period Cash Flow Testing Date”** means each Quarter Date following Financial Close, up to and including Completion;

**“Actual Construction Period Cash Flow Shortfall”** has the meaning given to it in clause 15.9 (Actual Construction Cash Flow Test);

**“Actual Construction Period Cash Flow Remedy Amount”** means the minimum amount necessary following a failure by the Borrower of the Actual Construction Period Cash Flow Test, to pass such test;

**“Actual Construction Period Excess Cash Flow Amount”** means the amount of Operating Cash generated in any quarter during the Construction Period which is greater than the amount required to satisfy the Actual Construction Period Cash Flow Test; and

**“Base Cash Financial Model”** means the computer model, agreed between the Lenders and the Borrower at Financial Close, as amended from time to time by agreement between the Lenders and the Borrower and delivered pursuant to paragraph 11.1 (Part I – Initial Conditions Precedent) of Schedule 3;

**“Current Assets”** means:

- a) cash held by the Borrower;
- b) any balance on the Debt Service Reserve Account;
- c) any balance on the Maintenance Reserve Account;
- d) any prepayments received;
- e) amounts owed to the Borrower and/or the amounts of any accounts receivable (in each case from trade debtors or HMRC in respect of VAT);
- f) amounts in respect of deferred taxes;
- g) inventory; and
- h) any cell preparation assets.

**“Current Liabilities”** means:

- a) amounts owed by the Borrower and/or the amounts of any accounts payable (in each case to trade creditors or HMRC in respect of National Insurance and VAT);
- b) the amount of any accruals or provisions made;
- c) the amount of any deferred tax liability;
- d) any cell restoration liabilities;
- e) any aftercare liabilities; and
- f) liabilities in respect of Corporation Tax

# Appendix 2 (continued)

## Extracts from Senior Term Loan Facility Agreement

“**Gross Revenue**” means, at any Ratio Testing Date and without double counting, the sum of:

- a) operating revenue including the Unitary Payment, any interim service payments (if applicable) and any actual or guaranteed third party income, but excluding, for the avoidance of doubt, the Bullet Payment;
- b) interest earned on all cash accounts (other than the Distribution Account);
- c) damages;
- d) insurance Proceeds to the extent received as compensation for loss of revenue;
- e) income earned on Authorised Investments (other than any Authorised Investments in respect of the Distribution Account, if any);
- f) rebates of Tax actually received or projected to be received in the latest Approved Budget; and
- g) all other income or proceeds of a revenue nature from whatever source;

Assumed in the Approved Financial Model to be receivable by the Borrower in the period commencing with such Ratio Testing Date and terminating on the Final Repayment Date or, in respect of any Ratio Testing Period ended on that Ratio Testing Date, all such revenues actually received during such Ratio Testing Period;

“**Operating Cash**” means:

- a) gross Revenue; less
- b) operating costs; plus or minus
- c) changes in Working Capital; less
- d) corporation Tax.

In each case, in respect of the Financial Year, as reflected in the operating cash flow calculation in the Approved Financial Model;

“**Working Capital**” means Current Assets minus Current Liabilities

“Operating Costs” means, without double counting any of those costs, and including any VAT thereon, costs identified as, or as the case may be, falling within the category of:

- a) costs and expenses of administering, maintaining and operating the Borrower, SWSL and BWL and the Project including, without limitation, all operating costs accrued prior to, or arising after Financial Close relating to the Borrower’s, SWSL’s and BWL’s existing operations under, or related to, the Waste Management Services Contract all costs relating to Environmental Matters and the costs of complying with the requirements of Environmental Laws and the terms and conditions of Environmental Authorisations (together in all cases with any applicable VAT thereon which is irrecoverable VAT);
- b) the costs of insurance premia (other than in relation to insurances covering the construction and commissioning of the Plant) and all property and occupation charges and rates to which the Project may be subject (together in each case with any applicable VAT thereon which is irrecoverable VAT);
- c) sums payable by the Borrower under the terms of the Project Documents to which it is a party, other than in relation to construction and commissioning of the Plant (together with any applicable VAT thereon which is irrecoverable VAT);
- d) taxes payable (excluding VAT other than “output tax” within the meaning of Section 24(2) of the Value Added Tax Act 1994) other than in relation to the construction and commissioning of the Plant;
- e) development costs; and
- f) in all cases, the equivalent lines thereafter in each Approved Budget and each Approved Financial Model.

The Borrower may only withdraw sums from the Excess Cash Flow Account:

- i. to meet Project Costs at any time on or after the Take-Over Date, but prior to Completion; or
- ii. to transfer any amount standing to the credit of Excess Cash Flow Account on Completion to the Distribution Account, provided that no Event of Default is continuing.



# Appendix 2 (continued)

## Extracts from Senior Term Loan Facility Agreement

### Actual Construction Period Cash Flow Test

- a) On each Actual Construction Period Cash Flow Testing Date, the Borrower will provide evidence satisfactory to the Lenders (acting reasonably) that the Actual Construction Period Cash Flow Test has been satisfied.
- b) Where there is a failure by the Borrower to satisfy the Actual Construction Period Cash Flow Test on any Actual Construction Period Cash Flow Testing Date (an "**Actual Construction Period Cash Flow Shortfall**"):
  - i. The Borrower shall serve a Standby Equity Funding Notice on each Shareholder pursuant to clause 4.2 (Standby Equity Funding Notice) of the Equity Agreement and through such notice request that each Shareholder contribute Equity in an amount equal to its Standby Contribution in accordance with clause 4.1 (Provision of Standby Equity) of the Equity Agreement; and
  - ii. in the event that [*Shareholder A*] fails to contribute Equity in accordance with clause 15.10(b)(i) above, the Borrower or the Security Agent shall be entitled to make a claim under the Equity Guarantee ([*Shareholder A*]) for an amount equal to [*Shareholder A's*] Standby Contribution of the Actual Construction Period Cash Flow Remedy Amount within the relevant period that such Equity is required to be paid pursuant to clause 8.1(b) ([*Shareholder A's parent*] Guarantee) of the Equity Agreement.

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Quarter End Date	MWM to send test and back up	Deloitte questions on test	Deloitte report ready	Report to Credit Committee	Credit Committee Meeting
	<i>Quarter End + 6 weeks</i>	<i>Quarter End + 7 weeks</i>	<i>Quarter End + 8 weeks</i>	<i>CC Meeting – 2 weeks</i>	<i>CC Meeting</i>
30/09/2016	By 11/11/2016	By 18/11/2016	By 25/11/2016	By 30/11/2016	14/12/2016
31/12/2016	By 10/02/2017	By 17/02/2017	By 24/02/2017	TBC	TBC

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**WASTE CREDIT GOVERNANCE COMMITTEE  
29 SEPTEMBER 2016****PROGRESS SUMMARY FROM TECHNICAL ADVISORS**

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**Recommendation**

1. **The Chief Financial Officer recommends that:**
  - a) **The summary report from Fichtner Consulting Engineers – Technical Advisors be noted; and**
  - b) **The Committee consider whether to report any matters to Council.**

**Introduction**

2. As set out in its Terms of Reference, the Committee will be advised by external financial, technical and legal advisers on behalf of the Council's Section 151 Officer.
3. Fichtner Consulting Engineers have been appointed as technical advisor to the lender during the construction phase of the Energy from Waste plant. The company has produced a summary report up to 31 July 2016 for consideration by the Committee and this is attached as an Appendix.

**Contact Points**County Council Contact Points

County Council: 01905 763763

Worcestershire Hub: 01905 765765

Email: [worcestershirehub@worcestershire.gov.uk](mailto:worcestershirehub@worcestershire.gov.uk)

Specific Contact Points for this report

Sean Pearce – Chief Financial Officer

Tel: 01905 846268

Email: [spearce@worcestershire.gov.uk](mailto:spearce@worcestershire.gov.uk)

**Supporting Information**

- Appendix – Summary reports from Fichtner Consulting Engineers – up to 31 July 2016

**Background Papers**

In the opinion of the proper officer (in this case the Chief Financial Officer) there are no background papers relating to the subject matter of this report.

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# MEMORANDUM

<b>To:</b>	Mark Forrester	<b>Organisation:</b>	Worcestershire County Council
<b>cc:</b>	Simon Lewis	<b>Organisation:</b>	Worcestershire County Council
<b>From:</b>	Kerry Booth	<b>Our Ref:</b>	S1291-2300-0008KSB
<b>Date:</b>	6 <sup>th</sup> September 2016	<b>No. of Pages:</b>	2
<b>Subject:</b>	Mercia LTA Construction Progress Summary – September 2016		

## 1 INTRODUCTION

Mercia Waste Management Limited ("Mercia") is constructing the 200,000 tonnes/year, 18 MWe Mercia EnviRecover EfW Plant in Hartlebury, Worcestershire. Fichtner Consulting Engineers Ltd (Fichtner) has been appointed as lender's technical advisor (LTA) for the construction phase of the plant. This summary memo covers relevant activities and progress based on review of latest available reports from the Owner's Engineer (OE) and Mercia (covering 1<sup>st</sup> – 31<sup>st</sup> July 2016).

## 2 PROJECT PROGRESS

The latest programme provided to the LTA for review shows that the facility should achieve Take Over by the contractual Take Over date of 28<sup>th</sup> February 2017. Current progress suggests this is achievable.

Civil work activities, including roads, drainage, gatehouse and weighbridge construction, firefighting system installation, administration building cladding and steelwork, tipping hall installation works, bunker and process building cladding and installation works, have continued in recent months. The critical path to Take Over goes through a number of civil work activities, including completion of the gatehouse and administrative block.

Installation of pipework is now substantially complete, with installation of instrumentation ongoing. Electrical works are still ongoing, with the latest programme provided for review showing electrical works will be complete before they are required for commissioning activities.

## 3 KEY PROJECT RISKS AND OBSERVATIONS

The Take Over date is directly related to the date for first waste deliveries. The cladding of the gatehouse has been delayed, and represents the greatest risk to delay in first waste deliveries.

Time pressure, especially with regards to the gatehouse and building services, gives the potential for quality or safety to be compromised. Construction and commissioning activities are being closely monitored on site to ensure that they are carried out safely and adhere to the quality procedures in place.

## 4 FINANCIAL AND COMMERCIAL

The cumulative amount which has been certified to date is £103,359,568.68. The LTA has issued ten payment certificates to allow drawdown on the senior loan.

Four additional Variation Orders were issued in June. To date forty-six Variation Orders have been issued. To date the net addition to the contract price is £740,173, which covers all Variation Orders. The largest component of the new Variation Orders related to the provision of additional strategic spares. There has been no extension of time for any Variation Orders issued to date.

**5 HEALTH AND SAFETY**

Health and safety standards have been maintained in recent months. There were two near misses involving dropped objects in July, one of which was considered particularly serious, and three issues involving vehicle collision. There is still room for improvement, and the owner's engineer will continue to monitor standards.

Six yellow cards and four red cards were issued in July. The yellow and red cards related to working at height or operation of mobile plant.

The number of site safety observation reports raised has remained steady, with the most common category of report concerning access and egress.

**6 PLANNED ACTIVITIES NEXT PERIOD**

The following activities are planned from August 2016:

- Completion of site wide civil engineering works, and continuation of civil works in the waste bunker, boiler hall, flue gas treatment hall, turbine hall, administrative building, weighbridges, gatehouse and fire water tank; and
- Completion of electrical works, minor works to close out snagging items and preparation for commissioning activities.

Yours sincerely  
FICHTNER Consulting Engineers Limited



**Kerry Booth**  
Associate Senior Consultant



**Phin Eddy**  
Commercial Director



## **WASTE CREDIT GOVERNANCE COMMITTEE**

### **29 SEPTEMBER 2016**

## **RISK REGISTER**

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### **Recommendation**

- 1. The Chief Financial Officer recommends that:**
  - a) The unmitigated and mitigated risks set out in the Risk Register be accepted; and**
  - b) The Committee consider whether to report any matters to Council.**

### **Introduction**

2. As set out in its Terms of Reference, the Committee will need to review the risks being borne as a result of the funding provided by the Council to Mercia and consider whether the risks being borne by the Council, as lender, are reasonable and appropriate having regard to the risks typically assumed by long term senior funders to waste projects in the United Kingdom and best banking practice.
3. A Risk Register has been established which sets out the unmitigated and mitigated risks associated with the loan arrangements.
4. Members will recall that at the meeting of the Committee on 15 December 2014, it was agreed that a report on the Risk Register would be brought to each meeting of the Committee (Minute no. 15 refers). An updated version of the Risk Register has therefore been produced and is attached as Appendix 1. Members are asked to consider the risks set out in the Register.
5. A copy of the Mercia Waste Loan Facility Drawdown Analysis is attached as Appendix 2.

### **Contact Points**

#### County Council Contact Points

County Council: 01905 763763

Worcestershire Hub: 01905 765765

Email: [worcestershirehub@worcestershire.gov.uk](mailto:worcestershirehub@worcestershire.gov.uk)

#### Specific Contact Points for this report

Sean Pearce – Chief Financial Officer

Tel: 01905 846268

Email: [spearce@worcestershire.gov.uk](mailto:spearce@worcestershire.gov.uk)

## **Supporting Information**

- Appendix 1 – Risk Register
- Appendix 2 - Mercia Waste Loan Facility Drawdown Analysis
- 

## **Background Papers**

In the opinion of the proper officer (in this case the Chief Financial Officer) the following are the background papers relating to the subject matter of this report:

Agenda papers and Minutes of the meeting of the Waste Credit Governance Committee held on 15 December 2014.

**Waste Credit Committee Risk Register**  
**September 2016 - Corporate Scoring Terms**

Risk Reference	Description of risk	Gross Impact	Gross Likelihood	Gross Risk Score	Risk control approach	Mitigating Actions	Residual Impact	Residual Likelihood	Residual Risk Score	Assigned to (Risk Owners)
a	Default of loan repayments by borrower to lenders due to SPV (Mercia) or HZI falling into administration.	Critical	Medium	15	Risk transferred	Due to the security package negotiated by the Councils a fall away analysis indicated that Mercia, its Shareholders and HZI would need to enter administration at the same time to put at repayment at risk during the construction phase. The maximum exposure to the Councils has been calculated and included within the sufficiency assessment of the Council's reserves. All press articles are scanned regularly for indications of financial strength issues and followed up to ensure counterparty risk is not increased.	Substantial	Very Low	6	The risk owners are the Section 151 Officers of each Council supported by Ashurst as advisors in case of contract default and Deloitte to monitor Mercia's actual quarterly cash flow tests and cover ratios that have to be maintained by Mercia.
b	Construction completion date of EFW is delayed and delays repayment of loan to lenders.	Substantial	Medium	11	Risk transferred	Under the contract terms agreed with Mercia, Mercia take all material risk on EFW construction delay and repayment of loan will commence around February 2017, as set out in the SLFLA and agreed final financial model. Repayments are not tied to the actual construction completion date, rather the planned date. The Council as lender has the right to call the loan into default if construction is not completed by a long stop date. The Lender's Technical Advisor has confirmed that the targeted Takeover Date is now the Planned Take Over Date, 28th February 2017.	Substantial	Very Low	6	The risk owners are the Section 151 Officers of each Council supported by Ashurst as advisors in case of contract default.
c	PWLB borrowing rates increase more than estimated in the Councils' prudential borrowing model. Higher rates would reduce the surplus generated on the loan arrangements with Mercia.	Substantial	Low	10	Risk treated	The cost of purchasing a financial product to remove this risk (a swaption) from an investment bank was quoted at £20m. The Councils decided to manage the risk through forecasting the forward price for its debt draw downs over the construction period and hold in reserve monies to mitigate this risk where required. Currently the rates accessible by the Councils are lower than this estimate as the continued low gilt rate environment pervades.	Substantial	Very Low	6	The risk owners are the Section 151 Officers supported by Treasury and Financing Teams.
d	Loan drawdowns are slower than set out in the STFLA. Delayed drawdowns would result in reduced interest payments to the Councils and potentially reduced surplus if PWLB loan rates increase between the expected draw date and actual.	Negligible	Medium	4	Risk treated	The Councils plan to borrow from PWLB at dates in line with drawdown requests from Mercia. Therefore although the Councils would receive reduced interest receipts, less interest would also be paid to PWLB. The Councils are monitoring market gilt rates actively and have the option to borrow from PWLB up to a year in advance of expected drawdown requests. Regular progress reports are being reviewed to ensure the construction programme and the loan drawdowns are requested in line with the plan	Negligible	Very Low	2	The risk owners are the Section 151 Officers supported by Treasury and Financing Teams.

e	Drawdown requests from Mercia are not actioned by the Councils or not actioned within the required contracted time period.	Substantial	Low	10	Risk treated	The Council's treasury teams have been fully briefed on the actions required to fulfil drawdown requests, checks required and the contracted timeline by the Section 151 Officer and their teams. Drawdowns to date have been actioned inline with requirements. Since the last Committee, two further drawdowns have been provided and there is a separate analysis available for the Committee outlining planned vs actual drawdowns made to date.	Substantial	Very Low	6	The risk owners are the Section 151 Officers supported by Treasury and Financing Teams.
f	Mercia loan principal and / or interest repayments are below the required values as per the rates agreed in the STFLA .	Substantial	Very Low	6	Risk treated	The Council's treasury team maintain a spreadsheet detailing drawdowns to date and expected future principal and interest payments. This is reconciled to Mercia's repayment spreadsheet and will be matched to principal and interest repayments received from Mercia during the post construction period.	Substantial	Almost Impossible	5	The risk owners are the Section 151 Officers supported by Treasury and Financing Teams.
g	Default of loan repayments by borrower to lenders due to HZI termination of Interserve Construction Limited (ICL) delaying project completion to after long stop date.	Critical	Medium	15	Risk treated	Sponsors have provided assurance that they believe HZI have undertaken the right processes to replace the final ICL work packages and that there is no financial risk to the Sponsors from the work underway. Sponsors confirmed that their Due Diligence on HZI had not raised any concerns around the company's viability or going concern. The Council as lender has the right to call the loan into default if construction is not completed by a long stop date, at which point the negotiated security package, set out in section 'a' above, would take effect.	Substantial	Very Low	6	The risk owners are the Section 151 Officers of each Council supported by Ashurst as advisors in case of contract default.
h	HZI termination of ICL may weaken negotiated security package due to no single new supplier exceeding £10 million contract value, and therefore triggering EPC Contract Schedule 7 requirements for Collateral Warranty and professional indemnity insurance requirements. The risk is that the Council as lender does not receive the same security package as it had when ICL was in place.	Substantial	High	12	Risk treated	In terms of Collateral Warranty, the HZI Collateral Warranty is in place and remains in place. Due Diligence has been undertaken by Sponsors and the Council as Lender(with the Financial Advisor) to confirm the financial strength of HZI in light of events. There are no issues arising from these reviews. Sponsors agreed to review on a case by case basis the requirement for additional security protections and advised the Council as to its rationale for its decision. The Council as Lender has sign off rights and requests have been made to the Councils prospectively for Schedule 7 services and retrospectively (based on Sponsor Assurance) for non-Schedule 7 services. Planned meetings have been held for sign off and Council advisors have been retained to provide advice. The Councils have clearly articulated to Sponsors that there should not be any weakening on the Security Package in place with regard to the Civil Engineering Work. There is no financial impact on Sponsors from events to date and therefore no financial impact on the Council as Lenders.	Substantial	Low	10	The risk owners are the Section 151 Officers of each Council supported by Ashurst as advisors in case of contract default.

**Key**

High 19 – 24	Unacceptable Risk: Immediate control/improvement required
Medium 8 – 18	Acceptable Risk: Close monitoring and cost effective control improvements sought.
Low 1 – 7	Acceptable Risk: Need periodic review, low cost control improvements sought if possible.

**Scoring Matrix**

<b>Likelihood</b>					
<b>Very High</b>	9	19	21	24	
<b>High</b>	8	12	20	23	
<b>Medium</b>	4	11	15	22	
<b>Low</b>	3	10	14	18	
<b>Very Low</b>	2	6	13	17	
<b>Almost impossible</b>	1	5	7	16	
	<b>Negligible</b>	<b>Substantial</b>	<b>Critical</b>	<b>Extreme</b>	
	<b>Impact</b>				

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LOAN DRAWDOWNS

**Mercia Waste Loan Facility Drawdown Analysis**

**September 2016**

**Key**

	Planned drawdown paid to Mercia
	Planned drawdown overdue

Planned Drawdown Date	Planned Facility A Loan Drawdown (£)	Planned Drawdown Date	Planned Facility B Loan Drawdown (£)	Planned Total	Actual Drawdowns	Actual WCC share	Actual Drawdown Dates
	£		£	£	£	£	
22-May-14	3,437,681	22-Apr-14	12,418,893	15,856,574	15,858,574	12,020,799	Drawdown 21/05/2014
31-May-14	1,138,388	31-May-14	4,112,516	5,250,904	5,250,904	3,980,185	Drawdown 05/06/2014
30-Jun-14	-	30-Jun-14	-				
31-Jul-14	-	31-Jul-14	-				
31-Aug-14	471,567	31-Aug-14	1,703,572	2,175,139			
30-Sep-14	284,368	30-Sep-14	1,027,302	1,311,670			
31-Oct-14	-	31-Oct-14	-				
30-Nov-14	956,758	30-Nov-14	3,456,362	4,413,120	7,899,929	5,988,146	Drawdown 11/02/2015
31-Dec-14	1,462,041	31-Dec-14	5,281,740	6,743,781			
31-Jan-15	425,251	31-Jan-15	1,536,253	1,961,504			
28-Feb-15	488,132	28-Feb-15	1,763,415	2,251,547	10,956,832	8,305,279	Drawdown 17/06/2015
31-Mar-15	922,698	31-Mar-15	3,333,319	4,256,017			
30-Apr-15	2,366,620	30-Apr-15	8,549,600	10,916,220	15,172,237	11,500,556	Drawdown 23/07/2015
31-May-15	2,400,673	31-May-15	8,672,622	11,073,295	11,073,295	8,393,558	Drawdown 21/10/2015
30-Jun-15	1,029,449	30-Jun-15	3,718,966	4,748,415			
31-Jul-15	1,315,749	31-Jul-15	4,753,246	6,068,995	10,817,410	8,199,597	Drawdown 25/11/2015
31-Aug-15	908,118	31-Aug-15	3,280,647	4,188,765			
30-Sep-15	1,209,552	30-Sep-15	4,369,603	5,579,155	9,767,920	7,404,083	Drawdown 01/02/2016
31-Oct-15	1,511,878	31-Oct-15	5,461,779	6,973,657			
30-Nov-15	1,550,833	30-Nov-15	5,602,507	7,153,340	14,126,997	10,708,264	Drawdown 25/02/2016
31-Dec-15	1,466,965	31-Dec-15	5,299,526	6,766,491			
31-Jan-16	567,125	31-Jan-16	2,048,785	2,615,910			
29-Feb-16	1,094,791	29-Feb-16	3,955,019	5,049,810	14,432,211	10,939,616	Drawdown 27/04/2016
31-Mar-16	1,021,353	31-Mar-16	3,689,717	4,711,070			
30-Apr-16	1,475,647	30-Apr-16	5,330,890	6,806,537	11,517,607	8,730,346	Drawdown 01/06/2016
31-May-16	1,197,470	31-May-16	4,325,954	5,523,424			
30-Jun-16	147,926	30-Jun-16	534,393	682,319			
31-Jul-16	139,033	31-Jul-16	502,267	641,300			
31-Aug-16	536,246	31-Aug-16	1,937,231	2,473,477			
30-Sep-16	586,749	30-Sep-16	2,119,676	2,706,425			
31-Oct-16	347,437	31-Oct-16	1,255,142	1,602,579			
30-Nov-16	166,670	30-Nov-16	602,109	768,779			
31-Dec-16	456,064	31-Dec-16	1,647,566	2,103,630			
31-Jan-17	1,002,431	31-Jan-17	3,621,359	4,623,790			
28-Feb-17	3,359,702	28-Feb-17	12,137,189	15,496,891			
<b>Total</b>	<b>35,445,365</b>	<b>Total</b>	<b>128,049,165</b>	<b>163,494,530</b>	<b>126,873,916</b>	<b>96,170,428</b>	

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## **WASTE CREDIT GOVERNANCE COMMITTEE**

### **29 SEPTEMBER 2016**

## **WAIVERS/CONSENTS**

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### **Recommendation**

1. **The Chief Financial Officer recommends that the waivers/consents granted during the period under review be noted.**

### **Introduction**

2. As set out in its Terms of Reference, the Committee will need to monitor and administer the loan to the waste project in line with best banking practice, including the terms of any waivers or amendments which might be required or are desirable.
3. The Chief Financial Officer has delegated authority for the day to day management of the waste management contract including waivers and consents that are not material to the STLFA to the Section 151 Officers.

### **Waivers/Consents requests**

4. For the period under review a waiver is expected to be requested by the Sponsors with regards to the revised Power Purchase Agreement. A verbal update on approval status of this waiver request will be provided at the Committee meeting.

### **Contact Points**

#### County Council Contact Points

County Council: 01905 763763

Worcestershire Hub: 01905 765765

Email: [worcestershirehub@worcestershire.gov.uk](mailto:worcestershirehub@worcestershire.gov.uk)

#### Specific Contact Points for this report

Sean Pearce – Chief Financial Officer

Tel: 01905 846268

Email: [spearce@worcestershire.gov.uk](mailto:spearce@worcestershire.gov.uk)

### **Background Papers**

In the opinion of the proper officer (in this case the Chief Financial Officer) there are no background papers relating to the subject matter of this report.

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