

Agenda

Waste Credit Governance Committee

Friday, 13 October 2017, 10.00 am
County Hall, Worcester

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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 3rd 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
Friday, 13 October 2017, 10.00 am, County Hall, Worcester

Membership: Mr P Grove (Chairman), Mr R C Adams, Mr R W Banks, Mr A I Hardman, Dr C Hotham, Mr L C R Mallett, Mr P Middlebrough and Mr P A Tuthill

Agenda

Item No	Subject	Page No
1	Named Substitutes	
2	Apologies/Declarations of Interest	
3	Public Participation 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 12 October 2017). Further details are available on the Council's website. Enquiries can be made through the telephone number/e-mail below.	
4	Confirmation of Minutes To confirm the Minutes of the meeting held on 14 July 2017. (previously circulated – pink pages)	
5	Technical Update - EFW Plant Completion	1 - 2
6	Risk Register	3 - 10
7	Waivers/Consents	11 - 12

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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: Wednesday, 4 October 2017

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**WASTE CREDIT GOVERNANCE COMMITTEE
13 OCTOBER 2017****TECHNICAL UPDATE – EFW PLANT COMPLETION**

Recommendation

1. **The Chief Financial Officer recommends that:**
 - a) **The completion of the EFW Plant following testing be noted; and**
 - b) **The Committee consider whether to report any matters to Council.**

Introduction

1. 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.
2. Fichtner Consulting Engineers were appointed as technical advisor to the lender during the construction phase of the Energy from Waste plant.
3. As noted at the March 2017 Committee meeting the Lenders Technical Advisor agreed that the EfW Plant achieved Actual Takeover on 2 March 2017 by Mercia Waste from their EPC Contractor, HZI.
4. The Council as Lenders were informed by Mercia Waste that the EfW Plant achieved Completion on 2 August 2017, following testing.

Contact PointsCounty Council Contact Points

County Council: 01905 763763

Worcestershire Hub: 01905 765765

Specific Contact Points for this report

Sean Pearce – Chief Financial Officer

Tel: 01905 846268

Email: spearce@worcestershire.gov.uk

Supporting Information

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

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.

WASTE CREDIT GOVERNANCE COMMITTEE
13 OCTOBER 2017**RISK REGISTER**

Recommendation

- 1. The Chief Financial Officer recommends that:**
 - a) The open and closed risks set out in the Risk Register be considered.**
 - 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 was established which set out the unmitigated and mitigated risks associated with the loan arrangements. Now that takeover is complete and all but two of the risks have expired, they have been reclassified into open and closed. The two remaining open risks have been substantially mitigated.
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. Members should note that only two risks at this point remain open as the EfW Plant has now achieved completion following Actual Takeover and both assessments of these risks are Green.
6. A copy of the Mercia Waste Loan Facility Repayment Analysis is attached as Appendix 2.

Contact Points

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Specific Contact Points for this report
Sean Pearce – Chief Financial Officer
Tel: 01905 846268
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Supporting Information

- Appendix 1.1 – Risk Register Open Risks
- Appendix 1.2 – Risk Register Closed Risks
- Appendix 2 - Mercia Waste Loan Facility Repayment 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 - Open Risks

October 2017 - 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 have entered 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. An example is where ACS Construcción and Services S.A., through its subsidiary ACS Servicios y Concesiones S.L., executed the sale recently of its total interest in URBASER S.A. To Firion Investments S.L.U, a company controlled by a Chinese group. The Councils then obtained legal advice that reassured lenders that no action was required by any parties arising from this change in ownership, as there were no changes to the Shareholder (Urbaser Limited).	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.
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.

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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

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

Impact

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Waste Credit Committee Risk Register - Closed Risks
October 2017 - 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)	Reason why risk is closed
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 the loans commenced on planned takeover date 28th February 2017, as set out in the SLFLA and agreed final financial model. Repayments are not tied to the actual construction completion date of 2nd March 2017, rather the planned date. The Council as lender also had the right to call the loan into default if construction was not completed by a long stop date.	Substantial	Almost Impossible	5	The risk owners are the Section 151 Officers of each Council supported by Ashurst as advisors in case of contract default.	Takeover took place on 2nd March 2017.
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. The rates accessible by the Councils were lower than the estimate as the low gilt rate environment.	Substantial	Almost Impossible	5	The risk owners are the Section 151 Officers supported by Treasury and Financing Teams.	Takeover took place on 2nd March 2017. All loan payments have been made to Mercia Waste and the rates gained from PWLB were below those estimated in the prudential model.
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 borrowed from PWLB at dates in line with drawdown requests from Mercia. Therefore although the Councils will receive reduced interest receipts, less interest will also be paid to PWLB. The Councils monitored market gilt rates actively and had the option to borrow from PWLB up to a year in advance of expected drawdown requests. Regular progress reports were reviewed to ensure the construction programme and the loan drawdowns are requested in line with the plan.	Negligible	Almost Impossible	1	The risk owners are the Section 151 Officers supported by Treasury and Financing Teams.	Takeover took place on 2nd March 2017. All loan payments have been made to Mercia Waste.
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 were 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 were all 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.	Substantial	Almost Impossible	5	The risk owners are the Section 151 Officers supported by Treasury and Financing Teams.	Takeover took place on 2nd March 2017. All loan payments have been made to Mercia Waste within the required contracted time period.
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 provided assurance that they believe HZI undertook the right processes to replace the final ICL work packages and that there was no financial risk to the Sponsors. 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 had the right to call the loan into default if construction was completed by a long stop date, at which point the negotiated security package, set out in section 'a' above, would have taken effect.	Substantial	Almost Impossible	5	The risk owners are the Section 151 Officers of each Council supported by Ashurst as advisors in case of contract default.	The final ICL work packages were replaced and takeover took place on 2nd March 2017.

h	<p>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.</p>	Substantial	High	12	Risk treated	<p>In terms of Collateral Warranty, the HZI Collateral Warranty remained in place. Due Diligence was undertaken by Sponsors and the Council as Lender (with the Financial Advisor) confirmed the financial strength of HZI in light of events. There was 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 rational for its decision. The Council as Lender had sign off rights and requests were made to the Councils prospectively for Schedule 7 services and retrospectively (based on Sponsor Assurance) for non-Schedule 7 services. Meetings were held for sign off and Council advisors were retained to provide advice. The Councils clearly articulated to Sponsors that there should not be any weakening on the Security Package in place with regard to the Civil Engineering Work. All ICL work packages were replaced and there was no financial impact on Sponsors and therefore no financial impact on the Council as Lenders.</p>	Substantial	Almost Impossible	5	<p>The risk owners are the Section 151 Officers of each Council supported by Ashurst as advisors in case of contract default.</p>	<p>The final ICL work packages were replaced and takeover took place on 2nd March 2017.</p>
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Key

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	Impact			

Mercia Waste Loan Facility Repayment Analysis

October 2017

Key

	Contracted WCC loan repayment paid to WCC
	Contracted WCC loan repayment overdue

Contracted Repayment Date	Contracted WCC Facility A (Amortising Loan) Repayment Principal £	Contracted wcc Facility A (Amortising Loan) Repayment Interest £	Contracted WCC Facility B (Bullet Loan) Repayment Interest £	Contracted WCC Total Loan Repayments £	Actual Repayments WCC Total Loan Repayments £	Actual Repayment Date
30/06/2017	-1,040,534	-492,126	-1,966,009	-3,498,669	-3,498,669	30/06/2017
31/12/2017	-1,958,461	-713,478	-3,087,452	-5,759,391		
31/03/2018	0	0	0	0		
30/06/2018	-2,526,486	-648,624	-3,037,114	-6,212,224		
31/12/2018	-1,785,384	-589,580	-3,087,452	-5,462,417		
31/03/2019	0	0	0	0		
30/06/2019	-2,544,044	-547,524	-3,037,114	-6,128,681		
31/12/2019	-1,752,253	-491,419	-3,087,452	-5,331,125		
31/03/2020	0	0	0	0		
30/06/2020	-2,762,092	-436,013	-3,053,893	-6,251,999		
31/12/2020	-1,442,458	-361,020	-3,087,452	-4,890,931		
31/03/2021	0	0	0	0		
30/06/2021	-3,091,770	-314,147	-3,037,114	-6,443,031		
31/12/2021	-2,322,963	-230,047	-3,087,452	-5,640,462		
31/03/2022	0	0	0	0		
30/06/2022	-3,215,011	-164,927	-3,037,114	-6,417,051		
31/12/2022	-2,426,131	-73,138	-3,087,452	-5,586,721		
31/03/2023	0	0	0	0		
30/06/2023	0	0	-3,037,114	-3,037,114		
31/12/2023	0	0	-3,087,452	-3,087,452		
Total	-26,867,587	-5,062,043	-41,817,637	-73,747,267	-3,498,669	

Please note that on 31st December 2023 the obligation for Mercia Waste to repay the Principal value on the Facility B (Bullet loan) of £97,061,268 will be negated as the ownership of the EFW Waste Plant is transferred to the Councils.

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WASTE CREDIT GOVERNANCE COMMITTEE
13 OCTOBER 2017**WAIVERS/CONSENTS**

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 no waivers/consents were requested by the Sponsors and approved by the Councils.

Contact PointsCounty Council Contact Points

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Specific Contact Points for this report

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