

Worcestershire County Council

Agenda

Waste Credit Governance Committee

Wednesday, 1 March 2023, 2.00 pm
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

Wednesday, 1 March 2023, 2.00 pm, County Hall, Worcester

Membership: Cllr Tony Miller (Chairman), Cllr Adrian Hardman, Cllr Bill Hopkins, Cllr Matt Jenkins, Cllr Luke Mallett, Cllr Emma Marshall, Cllr Linda Robinson and Cllr Chris Rogers

Agenda

Item No	Subject	Page No
1	Apologies/Named Substitutes	
2	Declarations of Interest	
3	Public Participation Members of the public wishing to take part should notify the Assistant Director for Legal and Governance 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 February 2023). Further details are available on the Council's website. Enquiries can be made through the telephone number/e-mail listed in this agenda and on the website.	
4	Confirmation of Minutes To confirm the Minutes of the meeting held on 9 December 2023. (previously circulated)	
5	Technical Update - Energy from Waste (EFW) Plant Reporting Requirements	1 - 10
6	Risk Register	11 - 16
7	Work Plan	17 - 20

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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: Friday, 17 February 2023

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WASTE CREDIT GOVERNANCE COMMITTEE (WCGC)

1 MARCH 2023

TECHNICAL UPDATE – ENERGY FROM WASTE (EFW) PLANT REPORTING REQUIREMENTS

Recommendation

- 1. The Chief Financial Officer recommends that the Committee note and comment on:**
 - a) The main categories of reports or information that the Borrower must regularly produce:**
 - Appendix 1 - The Historic Annual Debt Service Cover Ratio (“HADSCR”). The Projected Annual Debt Service Cover Ratio (“PADSCR”) and the Loan Life Cover Ratio before distributions (LLCR)**
 - Appendix 2 - Ratio compliance certificate**
 - Senior Term Loan Facility Agreement (STLFA) Assurance Statement for the Council attached as Appendix.**
 - b) The update on the agreed contract extension with Mercia Waste Management (MWM) and the KPMG findings.**

Introduction and Background

1. As background, in 1998 under a partnership agreement, Worcestershire County Council and Herefordshire District Council (the “Councils”) signed the Contract, which was one of the first joint waste PFI contracts within the UK.
2. In May 2014, the Council’s as Lenders, provided a total of £163.50m split across two facilities (Facility A £35.45m and Facility B £128.05m), to the Borrower for the purposes of constructing a new Energy from Waste Project in Hartlebury. Facility A is now fully amortised and repaid with the last payment received in full on the 31 December 2022.
3. The repayment for the loan relating to Facility B has been extended for a further 5 years and the final repayment will be made on the 11 January 2029. This is then to be repaid with a single bullet payment from the Councils.
4. As is standard with Facility Agreements of this nature, the Borrower is required to report periodically to Lenders on their compliance with certain requirements. One particular requirement is the ratios required to be measured under the STLFA at each calculation date (30 June / 31 December).

5. Ratios are a financial covenant imposed by Lenders (in this case the Council's as Lenders) as a monitoring mechanism to provide early warning of project distress and potential Borrower default on their repayment obligations. The ratios provide a measure of the project's historic and future performance in relation to its ability to service current and upcoming debt liabilities. The required ratios are:-

- **Historic Annual Debt Service Cover Ratio ("ADSCR"):** A historic periodic measure used to assess the projects ability to service its current debt obligation over the preceding 12-month period, based on actual cash flows.
- **Projected ADSCR:** A forecasted periodic measure used to assess the projects ability to service its upcoming debt obligations of the proceeding 12-month period, based on forecast cash flows.
- **Loan Life Cover Ratio ("LLCR"):** A forecasted measure used to assess the projects ability to repay the outstanding loan from future cash flows over the remaining life of the loan, based on longer term forecast cash flows

Extension of contract with MWM

6. On the 9 December 2021, a report was provided to Cabinet seeking negotiation to enter into a Variation with Mercia to put into effect their proposals for extending the duration of the Waste Management Services Contract for a period of five years until 11 January 2029 which also involved extending the existing loan by a further 5 years.

7. KPMG undertook a review on the ability of MWM to meet the financial ratio's on the basis the 5 year loan is agreed. The final KPMG report was circulated to Committee members on the 11 January 2023.

8. The key area that KPMG focussed on was to review the updated financial model and assess from a lender perspective the robustness of the revised financial ratio's which are a measure of the future financial health of the company and their ability to meet the loan commitments. Section 2 provided a summary of KPMG findings and specified in 2.1 that:

Overall, we can confirm the updated Financial Model provided by Mercia is consistent with the financing parameters agreed between Mercia and the Councils in November 2021. The financing arrangement as set out in the updated Financial Model and reflected in the STLFA is on balance considered to be reasonable and not adversely affect the risk profile of the Lenders.

9. Also in 2.1 (3) the report highlighted that the ***ratios are forecast to be higher than the default, lock-up and minimum which results in compliant levels of performance;***

10. Therefore hopefully this provides sufficient comfort to the Committee of the ability of Mercia Waste Services to make the loan repayments over the next 5 years.

11. The Lenders and Borrower have agreed that the first official semi-annual Ratio Testing Date will be 31 December 2022, on which date the Projected ADSCR and LLCR covenants must be met. The Historic ADSCR will not become an STLFA covenant until the 30 June 2023 testing date. This is to avoid "looking back" more than one quarter prior to the Effective Date.

Reporting Requirements post completion and loan extension

12. 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. This report covers the reporting requirements post completion.

13. The Council commissioned Ashurst LLP to identify the Borrower's Regular Reporting Obligations under the Herefordshire and Worcestershire Waste Facility Agreement for the post construction Energy From Waste (EFW) period, as set out in the Senior Term Loan Facility Agreement

14. The main categories of reports or information that the Borrower has to regularly produce going forward are:

- the Ratio Calculations report.
- the Ratio Compliance Certificate.
- reports in relation to financial and project information; and reports during the operating period.

15. As detailed in paragraph 11 above, the Historic Annual Debt Service Cover Ratio ("ADSCR") is not required until the 30 June 2023. Appendix 1: shows that the Projected ADSCR was 1:72 which is better than the target 1.35 and the Loan Life Cover Ratio ("LLCR") was 5.91 as at the 31 December 2022. Appendix 2 provides the signed Ratio compliance certificate.

Assurance Statement

16. It has been agreed that for Committee, Mercia Waste Management (MWM) will produce a short, high level assurance statement (Appendix 3). The aim being to reassure the Lender (the Council) that there is no material matters which would impair MWM's ability to repay the Loan in accordance with the Financial Model in the coming period. Another purpose of the statement is to cover the deficiency of the Loan Agreement Reporting in respect of the "Non – EFW" part of the MWM business.

17. Please note that Appendix 1 contains exempt information relating to the financial or business affairs of any particular person (including the authority holding the information) (on salmon pages) and should members wish to discuss the information included in this Appendix they would need to consider passing the appropriate resolution and moving into exempt session.

Contact Points

Rob Wilson
Pensions Investment, Treasury Management & Capital strategy manager
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Supporting Information

Appendix 1 – The Projected Annual Debt Service Cover Ratio ("PADSCR") and the Loan Life Cover Ratio before distributions (LLCR) – **(Exempt Information – Salmon pages)**
Appendix 2 - Ratio compliance certificate

Appendix 3 - the Senior Term Loan Facility Agreement (STFLA) Assurance Statement
Mercia

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:

KPMG Report on loan extension sent to Committee members on the 11 January 2023

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

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Ratio Compliance Certificate

To: Worcestershire County Council and The County of Herefordshire District Council ("The Lenders").

Attention: Rob Wilson

From: Mercia Waste Management Limited

The senior term loan facilities agreement dated 30th December 2022 between, among others, Mercia Waste Management and the Lenders (the "Senior Term Loan Facilities Agreement")

We refer to the Senior Term Loan Facilities Agreement. Terms defined in the Senior Term Loan Facilities Agreement have the same meaning in this notice.

Pursuant to clause 15.8 (Ratio Compliance Certificate) of the Senior Term Loan Facilities Agreement we confirm that:

(a)

- (i) the Historic Annual Debt Service Cover Ratio on 31 December 2022 was not required;
- (ii) the Projected Annual Debt Service Cover Ratio on 31 December 2022 was 1.72; and
- (iii) the Loan Life Cover Ratio on 31 December 2022 was 5.91 : 1; and

(b) so far as the Borrower is aware:

- (i) no Default has occurred other than any previously notified to the Lenders or waived in accordance with clause 21.3 (Remedies, Waivers, Amendments and Consents) of the Senior Term Loan Facilities Agreement

Date: 16th February 2023

By: 

Director

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Senior Term Loan Facility Agreement Assurance Statement for Lenders

Statement from Mercia Waste Management

1. Financial Performance / General

After a sustained period of effort by the Councils and Mercia Waste Management, on 30th December 2022 an extension was signed to the Waste Management Contract. At the same time the Loan Agreement was revised and extended with the same end date of 11th January 2029.

The Company now has a new Financial Model to work to and has begun to report against this. Its trading in January was largely in line with the Model overall.

The Company's capacity to make repayments of the loan and interest in full and on time remains in place

2. Loan Repayment

Repayments of Capital and Interest for the period ending 30th December 2022 were made on time in accordance with the Loan Agreement. The Company has every confidence that it will be able to deal with the payments due at the end of June 2023 in the same way.

3. Buildings, Plant and other Infrastructure

No problems exist which would require the Lenders attention at any of the Company's Facilities.

4. Compliance with Environmental Conditions and Permits

There are no material issues at any sites.

5. Insurance

The company completed the renewal process for the insurances which are renewed at the end of December. Terms are imminent for the EfW which is renewed separately in March. The Company is confident that it can place all the required covers. There are no significant issues to report in respect of claims or other matters.

6. Key Staff

There are no changes to report

J W Haywood - Mercia Waste Management. 13.02.2023

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WASTE CREDIT GOVERNANCE COMMITTEE

1 MARCH 2023

RISK REGISTER

Recommendation

- 1. The Chief Financial Officer recommends that:**
 - a) The risks set out in the Risk Register are considered; 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 was established which set out the unmitigated and mitigated risks associated with the loan arrangements. The three remaining risks have been substantially mitigated and are green and Members are asked to consider the risks set out in the Register as set out in Appendix 1.

4. A copy of the Mercia Waste Loan Facility Repayment Analysis is attached as Appendix 2 and this has now included the loan repayments that are due on Facility B up to the 11 June 2029. Please note that all repayments on Facility A have now been repaid.

Contact Points

Specific Contact Points for this report

Rob Wilson

Pensions Investment, Treasury Management & Capital strategy manager

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Supporting Information

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

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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Waste Credit Committee Risk Register

March 2023 - Corporate Scoring Terms

Risk Ref	Description of risk	Gross Impact	Gross Likelihood	Gross Risk Score	Risk control approach	Mitigating Actions	Residual Impact	Residual Likelihood	Residual Risk Score	Risk Ref
a	Default of loan repayments by borrower to lenders due to SPV (Mercia) or HZI falling into administration.	Critical	Medium	15 (A)	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 a 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 Construction and Services S.A., through its subsidiary ACS Services y Concessions 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). More recently as per an article on the 8th June 2021 Platinum Equity an American firm has acquired Urbaser.	Substantial	Very Low	6 (G)	a
	Impact of extension of contract with Mercia Waste Services by the County on the ability of company to repay the loan	Substantial	Low	6 (G)	Risk treated	KPMG have conducted an analysis of the ratios used for the ability of Mercia Waste Services to repay the loan on the basis of the extension and reduction in payments. KPMG have provided assurance that the revised ratios should not impact on the company's ability to repay the extended 5 year loan.	Substantial	Very Low	6 (G)	
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 (G)	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. The County receive an assurance statement within the Committee Report and the latest being on the 9th December 2022 provided by MWM..	Substantial	Almost Impossible	5 (G)	f

Key

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

Scoring Matrix

Likelihood				
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
4 11 14	Negligible	Substantial	Critical	Extreme
	Impact			

Mercia Waste Loan Facility Repayment Analysis

March 2023

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 Principal £	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	-5,759,391	31/12/2017
31/03/2018	0	0		0	0		
30/06/2018	-2,526,486	-648,624		-3,037,114	-6,212,224	-6,212,224	30/06/2018
31/12/2018	-1,785,384	-589,580		-3,087,452	-5,462,417	-5,462,417	31/12/2018
31/03/2019	0	0		0	0		
30/06/2019	-2,544,044	-531,450		-3,037,114	-6,112,607	-6,112,607	30/06/2019
31/12/2019	-1,752,253	-487,574		-3,087,452	-5,327,280	-5,327,280	31/12/2019
31/03/2020	0	0		0	0		
30/06/2020	-2,762,092	-436,013		-3,053,893	-6,251,999	-6,251,999	30/06/2020
31/12/2020	-1,442,458	-361,020		-3,087,452	-4,890,931	-4,890,931	31/12/2020
31/03/2021	0	0		0	0		
30/06/2021	-3,091,770	-314,147		-3,037,114	-6,443,031	-6,443,031	30/06/2021
31/12/2021	-2,322,963	-230,047		-3,087,452	-5,640,462	-5,640,462	31/12/2021
31/03/2022	0	0		0	0		
30/06/2022	-3,215,011	-164,927		-3,037,114	-6,417,051	-6,417,051	30/06/2022
31/12/2022	-2,426,131	-73,138		-3,087,452	-5,586,721	-5,586,721	31/12/2022
31/03/2023	0	0		0	0		
30/06/2023	0	0	-4,075,050	-3,037,114	-7,112,164		
31/12/2023	0	0	-905,817	-2,957,828	-3,863,645		
30/06/2024	0	0	-2,835,753	-2,897,177	-5,732,931		
31/12/2024	0	0	-1,596,519	-2,838,811	-4,435,330		
30/06/2025	0	0	-1,947,808	-2,742,570	-4,690,378		
31/12/2025	0	0	-97,833	-2,726,068	-2,823,902		
30/06/2026	0	0	-2,052,811	-2,678,560	-4,731,371		
31/12/2026	0	0	-532,762	-2,657,658	-3,190,420		
30/06/2027	0	0	-1,817,218	-2,597,656	-4,414,874		
31/12/2027	0	0	-785,345	-2,582,907	-3,368,252		
30/06/2028	0	0		-2,530,122	-2,530,122		
31/12/2028	0	0		-2,557,925	-2,557,925		
11/01/2029	0	0		-152,919	-152,919		
Total	-26,867,587	-5,042,124	-16,646,917	-68,650,387	-117,207,014	-67,602,782	

Please note that on 11th January 2029 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

1 MARCH 2023

WORK PLAN

Recommendation

- 1. Chief Financial Officer recommends that the Committee note and comment on the work plan attached as an Appendix.**

Introduction

2. The Waste Credit Governance Committee was provided with a work plan at the December 2023 meeting to assess what was planned in the future. This has been updated and is attached as an Appendix for comment and noting.

Contact Points

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Supporting Information

- Appendix – Work Plan

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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Waste Credit Governance Committee

Work Plan 2023

		23.06.23	04.10.23	08.12.23	TBD
No.	Activity	Q2 2023	Q3 2023	Q4 2023	Q1 2024
1	Budget Information				
2	Short Term Loan Facility Agreement (STLFA) Assurance Statement				
3	Ratio Analysis update				
4	Final Accounts Feedback (Statutory accounts are as at 31st December)				
5	Risk Register Update				

Q2 Apr to Jun

Ratio Analysis due 40 days after end of June and December

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