

# Agenda

## Waste Credit Governance Committee

**Wednesday, 28 October 2015, 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 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**  
**Wednesday, 28 October 2015, 2.00 pm, County Hall, Worcester**

**Membership:** Mr W P Gretton (Chairman), Mr L C R Mallett (Vice Chairman),  
Mr R C Adams, Mrs S Askin, Mr R W Banks, Mr M H Broomfield,  
Mr P Denham, Mr J W Parish and Mr P A Tuthill

**Agenda**

<b>Item No</b>	<b>Subject</b>	<b>Page No</b>
1	<b>Named Substitutes</b>	
2	<b>Apologies/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, 27 October 2015). 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 17 July 2015 (previously circulated)	
5	<b>Actual construction period cash flow test</b>	1 - 14
6	<b>Progress summary from technical advisors</b>	15 - 20
7	<b>Risk Register</b>	21 - 30
8	<b>Waivers/consents</b>	31 - 32

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

Date of Issue: Monday, 19 October 2015

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**WASTE CREDIT GOVERNANCE COMMITTEE**  
**28 OCTOBER 2015****ACTUAL CONSTRUCTION PERIOD CASH FLOW TEST**

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**Recommendation**

- 1. The Chief Financial Officer recommends that the result Actual Construction Period Cash Flow Test be considered.**

**Introduction**

- 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**

- 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**

- The result of the ACPCFT performed by Mercia for the period under review is an Excess Cash Flow amount as at 30 June 2015 of £1,087k. The result shows that in the period from 1 May 2014 to 30 June 2015, the operations have produced £1,087k more than was forecast for this period in the Base Case Financial Model.
- Based on this result the ACPCFT for the period under review is satisfied.

## **Contact Points**

### County Council Contact Points

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### Specific Contact Points for this report

Sean Pearce – Chief Financial Officer

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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

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For the period:  
1 April 2015 to 30 June 2015



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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 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.

## 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;
- Compared the senior term loan facility draw downs against those forecast in the Base Case Financial Model.
- Reviewed the technical reports that we received for the period to 30 June 2015.

## 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 2015 is £1,087k.

This shows that in the period from 1 May 2014 to 30 June 2015, the operations have produced £1,087k more than was forecast for this period in the Base Case Financial Model.

Based on the above, the ACPCFT for the 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
<b>Base case financial model</b>				
<i>b/f cash attributable to Ops</i>	4,254	4,793	7,051	9,123
Gross revenue	18,603	10,448	10,847	11,813
Operating costs	(14,893)	(8,111)	(8,320)	(8,961)
Changes in working capital	(1,212)	320	(18)	(252)
Cell preparation assets	(612)	0	0	0
Corporation tax	(1,346)	(400)	(437)	(477)
<b>Total change</b>	<b>539</b>	<b>2,258</b>	<b>2,072</b>	<b>2,122</b>
<b>Actuals</b>				
<i>b/f cash attributable to Ops</i>	4,637	6,480	11,674	10,423
Gross revenue	19,688	13,341	10,578	11,929
Operating costs	(15,557)	(8,588)	(8,509)	(9,372)
Changes in working capital	(1,392)	1,363	(3,018)	(171)
Cell preparation assets	(333)	(286)	0	0
Corporation tax	(563)	(636)	(302)	(476)
<b>Total change</b>	<b>1,843</b>	<b>5,194</b>	<b>(1,252)</b>	<b>1,910</b>
<b>Variance</b>	<b>1,304</b>	<b>2,936</b>	<b>(3,324)</b>	<b>(212)</b>
Excess cash flow a/c b/f	383	1,687	4,624	1,299
<b>Excess cash flow a/c c/f</b>	<b>1,687</b>	<b>4,624</b>	<b>1,299</b>	<b>1,087</b>

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

# Commentary

## Commentary

- The calculation is the result of a methodology agreed between parties (the Councils and Mercia) which accords with the STLFA signed on 21 May 2014.
- The result of the ACPCFT performed by Mercia for the period under review is an Excess Cash Flow amount as at 30 June 2015 is £1,087k.
- This shows that in the period from 1 May 2014 to 30 June 2015, the operations have produced £1,087k more than was forecast for this period in the Base Case Financial Model.
- Based on the above, the ACPCFT for the 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.
- We reviewed the technical report "*Mercia LTA Construction Progress Summary – July 2015*", which covers relevant activities and progress based on review of latest available reports from the Owner's Engineer (covering 1st – 30th April 2015) and Mercia (covering 1st – 31st May 2015), and on the monthly progress meeting held on site on 9th July 2015. From the report, we highlight the following aspects:
  - HZI have confirmed that procurement and manufacturing is "progressing as expected and is not currently on the critical path".
  - Construction progress on site during May has "remained good".
  - The key risk to the project remains the 3 month delay in the civil works.
- In July 2015, HZI made the decision to terminate Interserve due to the risks associated with their previous performance on the project. HZI will need to confirm how they intend to continue the civil works which were within Interserve's scope and how they will avoid additional delays. Mercia will be issuing a document providing more information on the reasons for termination and an initial view on HZI's plans to complete the project.
- Having discussed the technical reports with Mercia, we are told that there has been no change to model assumptions to date, nor are any envisaged at this time. However, a Contract Variation Instruction has been received regarding the relocation of a Household Waste Site (Tenbury) –the model will have to be updated for this change (a contractual requirement). This change should be cash neutral to the project.
- Mercia are also working on some changes to the model structure to enable them to update it for the above change and once the process has been agreed with the Council, the model will be updated.
- The Councils will have to clarify that they are happy for the updated model to be used for future ACPCFT.

# 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
<b>Model</b>				
Facility A	5,241	2,341	1,725	5,633
Facility B	18,898	8,426	6,190	20,288
<b>Total</b>	<b>24,139</b>	<b>10,767</b>	<b>7,916</b>	<b>25,921</b>
<b>Actual</b>				
Facility A	4,576	0	1,713	2,375
Facility B	16,532	0	6,187	8,581
<b>Total</b>	<b>21,108</b>	<b>0</b>	<b>7,900</b>	<b>10,957</b>
<b>Difference</b>	<b>(3,031)</b>	<b>(10,767)</b>	<b>(16)</b>	<b>(14,965)</b>

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Facility A is the amortising loan. Capital repayment begins in the quarter ended 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 ended 31 December 2023.

From discussion with Mercia management, the lack of draw down in October 2014 to December 2014 period 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 cash can be used on the WtE build).

We note that actual draw downs have been significantly below the draw downs that were forecast in the financial model. From discussion with Mercia management, this is due to the fact that, in general, there have been delays in the timing of some of the EPC milestone payments and the asset replacement programme has been a little behind due to the lead times for delivery / installation. These are delays in the timing of capital expenditure payments, and Mercia anticipate catching up with the model drawdowns later this year.

Source: Mercia; Financial Model

# Appendix 1

## Mercia's calculation (£000)

### Cash Flow Test Calculation

	1 Apr 15 to 30 Jun 15 ACTUAL	1 Apr 15 to 30 Jun 15 MODEL	
<b>Profit Before Depreciation and Tax</b>	<b>2,557</b>	<b>2,852</b>	<b>-294.88</b>
<b>Working Capital Movement (Operating)</b>	<b>-171</b>	<b>-252</b>	<b>81.32</b>
Cell Preparation Assets	-	-	-
Corporation Tax (Cash)	-476	-477	1.21
<b>Operating Cash Flow</b>	<b>1,910</b>	<b>2,122</b>	<b>-212.34</b>

## Mercia's cash flow notice

<i>Excess Cash – Opening Balance (Mar 2015)</i>	1,299
<i>Gross Revenue</i>	+116
<i>Operating Costs</i>	-410
<i>Changes in Working Capital</i>	+81
<i>Corporation Tax</i>	+1
<i>Total</i>	-212
<i>Excess Cash – Closing Balance (Jun 2015)</i>	1,087

### Excess Cash Flow

	1 April to 30 June 2015		
	Actual	Model	Var
Operating Cash Opening Balance	10,423	9,123	1,299
Operating Cash Flow (as above)	1,910	2,122	(212)
<b>Operating Cash Closing Balance</b>	<b>12,333</b>	<b>11,246</b>	<b>1,087</b>

Source: Mercia; Mercia also provided the workings behind this calculation so that the calculation could be reconciled to the company's trial balance and so it could be presented in a manner mapping to the description in the Senior Term Loan Facilities Agreement (see page 4).

# Appendix 2

## Extracts from Senior Term Loan Facility Agreement

**"Actual Construction Period Cashflow Test"** means the quarterly test to be carried out on each Actual Construction Period Cashflow Testing Date, in relation to the preceding quarter period to determine whether:

- (a) actual Operating Cash generated during that period plus the brought forward cash balance attributable to operations is equal to, or exceeds;
- (b) 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 Cashflow Testing Date"** means each Quarter Date following Financial Close, up to and including Completion;

**"Actual Construction Period Cashflow Shortfall"** has the meaning given to it in clause 15.9 (Actual Construction Period Cashflow Test);

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

**"Actual Construction Period Excess Cashflow 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 Cashflow Test;

**"Base Case 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; plus
- (b) interest earned on all cash accounts (other than the Distribution Account); plus
- (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 that Financial Year, as reflected in the operating cashflow calculation in the Approved Financial Model;

**"Working Capital"** means Current Assets minus Current Liabilities.

Source: Senior Term Loan Facility Agreement

**"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 cost 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; and
  - (e) development costs,
- and in all cases, the equivalent lines thereafter in each Approved Budget and each Approved Financial Model;

- (b) 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.



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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>
30/09/2015	By 12/11/2015	By 19/11/2015	By 26/11/2015	By 30/11/2015	14/12/2015
31/12/2015	By 12/02/2016	By 19/02/2016	By 26/02/2016	By 18/03/2016	01/04/2016
31/03/2015	By 13/05/2016	By 20/05/2016	By 27/05/2016	By 24/06/2016	08/07/2016
30/06/2016	By 11/08/2016	By 18/08/2016	By 25/08/2016	By 15/09/2016	29/09/2016
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**  
**28 OCTOBER 2015****PROGRESS SUMMARY FROM TECHNICAL ADVISORS**

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**Recommendation**

1. **The Chief Financial Officer recommends that the summary report from Fichtner Consulting Engineers – Technical Advisors be noted.**

**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 2 October 2015 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 766268

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

**Supporting Information**

- Appendix – Summary reports from Fichtner Consulting Engineers – up to 2 October 2015

**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>	S1291-2300-0004KSB
<b>Date:</b>	2 <sup>nd</sup> October 2015	<b>No. of Pages:</b>	3
<b>Subject:</b>	Mercia LTA Construction Progress Summary – October 2015		

## 1 INTRODUCTION

Mercia Waste Management Limited ("Mercia") is constructing the 200,000 tonnes/year, 18 MWe Mercia EnviRecover EfW Plant in Kidderminster, 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) (covering 1<sup>st</sup> – 31<sup>st</sup> August 2015) and Mercia (covering 1<sup>st</sup> – 31<sup>st</sup> July 2015). Fichtner has not been made aware of any issues during the month of September which need to be drawn to the Council's attention. Fichtner will attend the November progress meeting to confirm the civil engineering activities scheduled for October have been completed.

## 2 PROJECT PROGRESS

Construction of process steelwork, boiler construction and civil works on the turbine hall area have progressed well in this period, and has generally been in line with the revised Approved Programme. However, due to the termination of the contract with Interserve and delays in appointing replacement civil contractors, the critical path is now shown to go through the administration block construction and installation of building services. The latest programme shows a target Take Over date of 31<sup>st</sup> March 2017, one month after the contractual Take Over date of 28<sup>th</sup> February 2017.

The status of activities on site are summarised below.

- Site wide and temporary works – Drainage installation has progressed when access permits.
- Perimeter retaining wall and access ramps – Concrete pouring of the east access ramp is ongoing.
- Tipping hall and bunker area – Preparation works for pouring of the south crane beam has commenced. Installation of steelwork and precast concrete planks to the west and east cores and hopper shelf sections continues.
- Boiler and Flue Gas Treatment (FGT) hall area – Installation of the economiser and boiler membrane walls is ongoing. Erection of the FGT structural steel cube 101 is due to commence in September.
- Administration building area – Installation of fire wall cladding has commenced. Installation of phase 3 of the administration building steelwork is due to commence in September.
- Turbine hall – Structural steelwork is ongoing with installation of cladding due to commence in September. Lifting in of process equipment is ongoing.
- Air Cooled Condenser (ACC) – All pad foundations are complete. This area is now being used as laydown for the bag filter sections therefore no works on the ACC are progressing.
- Substation and 66kV transformer area – Installation of the earthing grid and the 66kV equipment plinths has commenced and is due to be completed in the September. The transformer blast walls and bund are complete. Structural steelwork for the DNO control room is also complete.

- Perimeter retaining wall and access ramps – Removal of the temporary earth ramp is complete and cleaning of the perimeter retaining wall continues in preparation for pouring of the permanent reinforced concrete east ramp.

### 3 KEY PROJECT RISKS AND OBSERVATIONS

The appointment of replacement subcontractors following the termination of Interserve's contract and the progress of the civil works, particularly building services design, remains the key risk to the project. Delays in appointing replacement subcontractors has resulted in poor civil construction progress. HZI are now predicting a Take Over date of 31<sup>st</sup> March 2017, one month after the contractual Take Over date. The critical path in the programme now runs through construction of the administration building.

It is critical that the building services and fire detection/suppression contracts are placed by the dates shown in the latest programme. The timing of awarding these contracts, and the commencement date for installation of the admin block phase 3 structural steel will determine if the projected Take Over date is likely to slip further.

HZI have advised that the late shift (19:00 to 02:00) and Sunday working (which has been agreed with Worcestershire Regulatory Services) is available for acceleration of specific works. These time periods will be used by:

- individual contractors to meet their contractual deadlines;
- by HZI to fit in activities (such as the drainage at the -8m level) which conflict with other works; and
- to progress critical path items such as the administration block steelwork.

Provided the key contract award dates are met, additional working hours means there is still potential for the Take Over date to be earlier than currently forecast. Fichtner will continue to monitor the situation and provide updates accordingly.

### 4 FINANCIAL AND COMMERCIAL

Payments have now been made for thirteen milestone events. These include four process milestones and nine civil milestones and amount to 64.5% of the total payment. The cumulative amount which has been certified to date is £39,364,723.16. The LTA has issued four payment certificates to allow drawdown on the senior loan.

No milestone payments were applied for in July or August. An application for milestone 18 - Flue gas treatment reactor in position, is expected in September.

To date twenty seven Variation Orders have been issued, of these three have involved a reduction to the contract price, and one an addition. To date the net reduction to the contract price is £89,463. There has been no extension of time for any Variation Orders issued to date.

Cost proposals are outstanding for 5 additional items requested by Mercia. It was agreed that these costs will be offset against the saving from not providing a concrete lining wall to the perimeter secant piles, which has been requested by HZI. Once prices have been agreed Variation Orders will be issued wherever there is a change to the contractual requirements.

### 5 HEALTH AND SAFETY

There were no injuries reported in July or August. However, there was a significant increase in disciplinary action with thirteen yellow cards and three red cards issued in July and seven yellow cards and one red card issued in August. Eight of the yellow cards related to incorrect use of personal protective equipment (PPE), two in relation to poor supervision and ten to working at height. Two of the red cards related to failure of an alcohol test at the induction and two to working at height. HZI have stated that, in line with the current phase of construction, they are focussing on working at height practices and that this is reflected by the increased number of SSORs raised in this category in August. Any transgressions are also being dealt with through the disciplinary system to make sure that high standards are maintained.

Despite the increase in disciplinary action, Fichtner consider that there remains a good health and safety culture on site, and that the organisation of the site and the level of attention given to health and safety continues to be good. The fact that disciplinary action is being taken where appropriate, shows that HZI are remaining firm when dealing with any transgressions of the site rules, which should help to maintain the current high standards.

## 6 PLANNED ACTIVITIES NEXT PERIOD

At present the following activities are planned for September 2015:

- Detailed engineering of remaining packages (including boiler piping, turbine control, electrical engineering, instrumentation, various civil packages, etc);
- Placement of purchase orders for a number of process and civil items, including weighbridges, waste bunker excavation and construction, external doors and blockwork and request for quotations on a number of additional civil packages;
- Continued manufacture of items currently in work, including intermediate and final inspections where required;
- Continued work on civil packages including drainage (as access permits), perimeter retaining wall and access ramp, waste bunker, admin building, demineralised water building, turbine hall, high voltage transformer compound, high voltage substation, and DNO control room; and
- Continued work on process packages including boiler pre-assembly and assembly, boiler hall ductwork and grate installation, installation of FGT steelwork and installation of ducting and fabric filters, and installation of the turbine to ACC steam duct.

Yours sincerely  
FICHTNER Consulting Engineers Limited

**Kerry Booth**  
Consultant

**Phin Eddy**  
Commercial Director

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## **WASTE CREDIT GOVERNANCE COMMITTEE**

### **28 OCTOBER 2015**

## **RISK REGISTER**

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### **Recommendation**

- 1. The Chief Financial Officer recommends that the unmitigated and mitigated risks set out in the Risk Register be considered.**

### **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.
6. At the Committee meeting held on 17 July 2015 questions were raised from both members of the public and Committee members regarding the need to ensure quality throughout the construction. Appendix 3 is a letter from the Sponsors' technical advisors to the Sponsors confirming their informed position on quality.

### **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

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## **Supporting Information**

- Appendix 1 – Risk Register
- Appendix 2 - Mercia Waste Loan Facility Drawdown Analysis
- Appendix 3 - Sponsors technical advisors letter regarding quality.

## **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**  
**October 2015 - 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 expected Takeover Date is now the Planned Take Over date plus one month, 31st March 2015.	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, one further drawdown has 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 are undertaking the right processes to replace the 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.
Page 24	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 have agreed to review on a case by case basis the requirement for additional security protections and will advise the Council as to its rational for its decision. The Council as Lender has sign off rights and requests have and will continue to be 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 and will continue to be arranged 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**

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
	Negligible	Substantial	Critical	Extreme
		Impact		

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**LOAN DRAWDOWNS**

**Mercia Waste Loan Facility Drawdown Analysis**

**October 2015**

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			
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			
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			
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			
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			
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			
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>55,138,476</b>	<b>41,794,965</b>	

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5<sup>th</sup> October 2015

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Gillian Sinclair  
Mercia Waste Management Limited  
C/O FCC Environment  
Ground Floor West  
900 Pavilion Drive  
Northampton  
NN4 7RG

**Ref: HZI Installation Quality to Date**

Dear Gillian,

We can confirm that in general the quality of construction on the EnviRecover project is good.

HZI have a site inspection procedure, which is outlined in the attached document, in order to monitor quality. There is a good relationship between our Site Representative, Paul Draffan and HZI's quality manager Georgios Apostolidis, and we are invited to all HZI site intermediate inspections (IIS), so that components can be inspected prior to insulation. We will also be invited to final site inspections (FIS). These inspections present the opportunity to check quality documentation and pick up any snags prior to the final Mechanical Erection Completion (MEC) inspection for the system. The MEC is the final inspection for each system to ensure that it meets the contractual and good industry practice requirements.

We are also able to review HZI's quality monitoring documentation, including weld maps, at any time, through arrangement with the HZI Quality Manager.

In addition to the HZI organised inspections, we carry out our own independent plant walk downs and inspections daily. Any issues we encounter are raised through the observations system. To date, 39 civil observations have been raised (with 12 closed) and 4 process observations have been raised. Compared to other projects, this is a relatively low number, and none of the observations raised to date give any particular cause for concern.

The quality of material and equipment delivered to site is good. In particular we have been impressed with the professionalism and diligence of Carey's, Refako and Mostostal Pulawy. Equipment has also been inspected prior to shipment from the factory during Factory Inspection Workshops (FIWs). As part of these inspections, the quality system of the boiler supplier Refako was audited and found to be robust. The turbine rotor was inspected and confirmed that the balancing requirements had been met. Our electrical engineer has also been impressed with the build quality and specification of the electrical panels inspected to date, with only minor issues raised.

In conclusion, the quality of site installation is good and we currently have no major concerns. There has been no reduction in quality of the civil works since the termination of the Interserve contract. The key Interserve subcontractors such as Arup, Royal Haskoning and Adstone have been retained. Where there has been a replacement of a subcontractor e.g. Bemac for Carey's the level of quality has been maintained.

Yours sincerely  
FICHTNER Consulting Engineers Limited

**Mark Shatwell**  
Project Manager

**Stuart Wilson**  
Fichtner Project Director

## **WASTE CREDIT GOVERNANCE COMMITTEE**

### **28 OCTOBER 2015**

### **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 the following waivers/consents were requested by the Sponsors and approved by the Councils:
  - The Councils provided a waiver/consent for the appointment of ARUP and Royal Haskoning as new Major Subcontractors for the fire design prevention contract following the HZI termination of Interserve.
  - The Councils provided a waiver/consent under clause 18.4(b)(ii)(G) of the Senior Term Loan Facility Agreement in relation to the appointment of either Compco or Argus as new Major Subcontractors to replace a number of the subcontracts that needed to be re-procured following the HZI termination of Interserve
  - The Councils provided a waiver/consent for the appointment of Orona Elevators for the lift contract following the HZI termination of Interserve.
5. The Councils' officers and advisors conducted the required Due Diligence prior to these approvals

#### **Outstanding Civil Packages**

6. Sponsors have now confirmed that the remaining civil packages to be let by HZI, following the termination of Interserve, is £13.7M compared to £19M at the start of August. Of the £13.7M that is outstanding c. 70% relates to building services. Proposals are due to be received at the end of October for Building Services. HZI are permitted to let the remainder of the contracts (£5.3 million) without the need to seek consent from Lenders

## **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)

## **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.