

Warwickshire Waste Partnership – 9 December 2008

Development of Long-Term Residual Waste Treatment Facilities - Progress Update

Report of the Strategic Director for Environment and Economy on behalf of the Officers Group

Summary

The report provides an update on the development of long-term residual waste treatment facilities to serve Warwickshire.

Recommendation

That each authority considers and provides comments on the draft Memorandum of Understanding, developed to support the residual waste treatment projects.

1. Background

1.1 At the June meeting of the Warwickshire Waste Partnership a report was presented providing an update regarding the two key projects to divert residual waste away from landfill. This report provides an update on progress with the two projects.

1.2 The two main projects are:-

Working with Staffordshire County Council (SCC) – **Project W2R** (waste to resources).

Working with Coventry City Council (CCC) and Solihull Metropolitan Borough Council (SMBC) – **Project Transform**.

2. Progress with Project W2R

2.1 Staffordshire County Council were successful in their application for PFI Credits and were awarded £124 million of Private Finance Initiative (PFI) Credits in July.

2.2 Warwickshire County Council and the other participating councils, Sandwell Metropolitan Borough Council and Walsall Metropolitan Borough Council have all agreed and signed Heads of Terms to progress the project.

- 2.3 The procurement process for the treatment facility started in August, with Staffordshire expressing a preference for Energy from Waste (EfW) as a treatment technology. However, variant, compliant bids will be accepted.
- 2.4 Following a pre-qualification exercise, four potential bidders have been selected to take through into the competitive dialogue phase of the procurement. The successful bidders are:-
- (i) Veolia
 - (ii) Coventa
 - (iii) Shanks & Wheelabrator
 - (iv) MW Umwelt GmbH
- 2.5 Staffordshire has also been successful in obtaining planning permission for an Energy from Waste facility at their site at Four Ashes. This is a significant achievement and will help with meeting the challenging project timetable.
- 2.6 The next key stage in the development of the project is the 'Competitive Dialogue' stage of the procurement process, where the potential bidders will submit their Outline Solutions to be evaluated against set evaluation criteria. This is an iterative process and one which is used to potentially narrow down the number of bidders until a single 'preferred bidder' is identified.

3. Progress with Project Transform

- 3.1 The Outline Business Case (OBC) for PFI Credits was submitted on the 31 October. A copy of the OBC and supporting documentation is available on the Project Transform website www.projecttransform.info.
- 3.2 The OBC is a detailed document, which contains technical and financial information required by the Department for food and rural affairs (Defra) so that they can make a decision on whether to allocate PFI credits to the project. A reference project was developed and it is on the basis of the reference project that PFI credits are being requested. In summary, the key aspects of the reference project are as follows:-
- (i) The reference project technology is Energy from Waste (EfW) with Combined Heat and Power.
 - (ii) Based on current predictions the plant will need to have a processing capacity of 305,000 tonnes to meet the residual waste requirements of the three partners.
 - (iii) It is assumed that the Partners will meet or exceed the target of 50% recycling and composting by 2020.
 - (iv) The plant will be operational from April 2015 for a contractual period of 25 years.
 - (v) Project Transform will be seeking PFI Credits in the region of £128 million
 - (vi) A reference site has been identified adjacent to the existing EfW plant in Coventry .

- (vii) An Outline Planning Application is scheduled to be submitted during the summer of 2009.
 - (viii) The Governance structure will be a Lead Authority – Joint Executive, with Coventry City Council acting as the lead authority.
- 3.3 The OBC also makes reference to a Sub-regional Waste Framework. This document is an amalgamation of the three Partners existing waste strategies and demonstrates that the Partners are working collectively to the same aims of reducing waste and increasing levels of recycling and composting in the sub-region.
- 3.4 The development of an OBC requires that an 'affordability gap' is calculated for the PFI project, this is essentially an estimation of how much the project is likely to cost for the whole of the 25 year contract period. This is compared to the cost of a 'Do-nothing Scenario'.
- 3.5 For Warwickshire the total nominal cost of the project is £455m over 25 years as compared to £590m for the Do Minimum and £376m current budget levels.
- 3.6 The affordability gap is presented as a range which has been developed after applying a number of sensitivities to the data, these are events which could have an impact on the cost of the project, for example capital and operating cost increases, a delay in start of operations and the impact of increased borrowing costs. When these factors are applied to the costs, it is estimated that the affordability range for Warwickshire will be: £78 - 142m over 25 years and in 2015/16 £7.5m - £10.5m.

4. Role of Waste Reduction and Recycling

- 4.1 It is important to stress that involvement and development of the long-term residual waste treatment projects will not have a detrimental effect on our ambitions as a Waste Partnership and as individual authorities to increase recycling and composting and also to reduce the amount of waste produced in Warwickshire.
- 4.2 In the OBC the three partners have committed to meeting and where possible exceeding the targets in the Waste Strategy for England 2007, which are:
- 4.3 The key targets set in the Strategy for England are as follows:-
- (i) Recycle and compost 40% of household waste by 2010.
 - (ii) Recycle and compost 45% of household waste by 2015.
 - (iii) Recycle and compost 50% of household waste by 2020.
- 4.4 However, the County Council has been tasked by its Members to reach 55 – 60%. Recycling and composting levels in 2020. The method and feasibility of reaching these higher levels will be discussed with the district and borough councils as part of the review of Warwickshire's Municipal Waste Management Strategy, which will take place in 2009.

5. Involvement and Engagement of the District and Borough Councils

- 5.1 The input of the district and borough councils is pivotal to the success of these projects and the attainment of higher levels of recycling and composting.
- 5.2 This is actively recognised by Defra and therefore as part of the process for securing PFI credits, Defra requires the districts and county council to enter into a formal agreement regarding the delivery of waste to the residual waste treatment facility and recycling. To facilitate this, the 4P's (on behalf of Defra) has developed a standard template for authorities to use as a basis for developing agreement.
- 5.3 To satisfy this requirement, a Memorandum of Understanding (MOU) has been drafted using the standard template, which sets out certain requirements for the delivery of waste to the new residual treatment facilities.
- 5.4 A copy of the draft MOU is provided in **Appendix A**. This MOU forms a companion to the Waste Partnership Agreement, which establishes a joint committee that will provide oversight for the MOU.
- 5.5 Increased district involvement in these projects will be discussed at the next meeting of the Waste Collection Project Group (meeting to be arranged).

6. Next Steps

- 6.1 **Project W2R** Agree payment mechanism for contract.
Start Competitive Dialogue process.
- 6.2 **Project Transform** Develop procurement documents.
Start development of planning application.

Enquiries: about this report should be made to Kalen Wood, Programme Manager, 01926 - 418064, email kalenwood@warwickshire.gov.uk

Background Papers

Project Transform – Outline Business Case for PFI Credits

PAUL GALLAND
Strategic Director for Environment and Economy
Shire Hall
Warwick

1 December 2008

Warwickshire Waste Partnership – 9 December 2008

**Development of Long-Term Residual Waste Treatment
Facilities - Progress Update**

DATED

2008

- (1) Warwickshire County Council**
- (2) North Warwickshire Borough Council**
- (3) Nuneaton and Bedworth Borough Council**
- (4) Rugby Borough Council**
- (5) Stratford-on-Avon District Council**
- (6) Warwick District Council**

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made on September 2008

BETWEEN

1. **WARWICKSHIRE COUNTY COUNCIL** of **SHIRE HALL, WARWICK, CV34 4SA** (the **WDA**);
2. **NORTH WARWICKSHIRE BOROUGH COUNCIL** of **SOUTH STREET, ATHERSTONE, WARWICKSHIRE, CV9 1DE**;
3. **NUNEATON AND BEDWORTH BOROUGH COUNCIL** of **COUNCIL HOUSE, COTON ROAD, NUNEATON, WARWICKSHIRE, CV11 5AA**;
4. **RUGBY BOROUGH COUNCIL** of **TOWN HALL, EVREUX WAY, RUGBY, WARWICKSHIRE, CV21 2RR**;
5. **STRATFORD-ON-AVON DISTRICT COUNCIL** of **ELIZABETH HOUSE, CHURCH STREET, STRATFORD-UPON-AVON, WARWICKSHIRE, CV37 6HX**; and
6. **WARWICK DISTRICT COUNCIL** of **RIVERSIDE HOUSE, MILVERTON, LEAMINGTON SPA, WARWICKSHIRE, CV32 5HZ**.

(together, the *Parties*)

BACKGROUND

- (A) **Warwickshire County Council** is the Waste Disposal Authority under section 30(2) of the Environmental Protection Act 1990.
- (B) **North Warwickshire Borough Council, Nuneaton and Bedworth Borough Council, Rugby Borough Council, Stratford-on-Avon District Council and Warwick District Council** are the Waste Collection Authorities for their respective areas under section 30(3) of the Environmental Protection Act 1990.
- (C) The Parties recognise and endorse the need to address central government and European targets for waste minimisation, for the diversion of biodegradable municipal waste from Landfill, for the promotion of and increase in recycling and the recovery of waste and the promotion of sustainable development including the use of waste as a resource. The Parties have participated in the creation of, and entered into, the Warwickshire Joint Municipal Waste Management Strategy (the **WJMWMS**) and the Warwickshire Waste Partnership.
- (D) The Parties wish to establish a clear and accountable framework in this Memorandum of Understanding (the **MoU**) under which they can work together in delivering their respective waste disposal and waste collection responsibilities and to promote the economic, environmental and social well-being of their respective areas. They wish to be able to respond in a more effective and co-ordinated way in relation to the implementation and any future development of the WJMWMS and to introduce and promote joint working arrangements that will be in the best interests of the Council Tax payers of the Parties.
- (E) The WDA and relevant WCAs are acting in participating, Walsall Council and Sandwell Council, in Staffordshire County Council's Project W2R to procure a residual waste treatment plant. The WDA is also acting in partnership with Coventry City Council (**CCC**) and Solihull Metropolitan Borough Council (**SMBC**) to procure a residual waste

management treatment plant. This project is known as **Project Transform**. The WDA, CCC and SMBC are applying for Private Finance Initiative (**PFI**) credits to contribute to the costs of Project Transform. The PFI application process requires a reference project to be developed. The Project Transform reference project is for an Energy from Waste plant (with potential combined heat and power provision) to be developed at a site in Whitley, Coventry, adjacent to the current Energy from Waste plant operated by Coventry and Solihull Waste Disposal Company, a Local Authority Waste Disposal company. The WDA, CCC and SMBC jointly intend to publish a contract notice in the Official Journal of the European Union in order to seek expressions of interest in respect of Project Transform following successful completion of their Outline Business Case for PFI credits.

1. Definitions And Interpretation

a. Definitions

In this MoU, unless the context otherwise requires the following terms shall have the meanings given to them below:

Best Value	waste authorities have a duty placed on them as best value authorities by section 3 of the Local Government Act 1999 “to make arrangements to secure continuous improvements in the way they exercise their functions having regard to a combination of economy, efficiency and effectiveness”;
Business Day	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
Commencement Date	means the date of this MoU;
Commercial Waste	means as defined under Section 75(7) Environmental Protection Act 1990;
Confidential Information	means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), whether or not it is marked as proprietary and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988;
Contingency Delivery Point	means a contingent Delivery Point meeting the Delivery Point Standards and located within a reasonable distance of each WCA;
Delivery Point	means a facility, site or transfer station, which is licensed to receive Waste, which meets the Delivery Point Standards and which is located within a reasonable distance of each WCA (where the term “reasonable” should allow for the distance implications arising from potential collaborative projects between neighbouring counties);
Delivery Point Standards	means those standards set out in Schedule [•] to this MoU;
Direction	means a direction made by the WDA under section

	51(4) of the EPA, in which the WDA directs a WCA to deliver Waste to a Delivery Point, or in respect of recycling, or the separation of Waste;
Dispute Resolution Procedure	means the procedure for the resolution of disputes set out at clause [•];
Dry Recyclable Waste	means Waste comprising the commodities described in the Composting and Recycling Plans set out in Schedule [•] to this MoU;
EPA	means the Environmental Protection Act 1990, as amended from time to time;
Environmental Impact Assessment	means as required under the Environmental Impact Regulations for the England;
Expiry Date	means a date five years from the Commencement Date or the expiry of any long-term contract arising or related to Project Transform or any other project with similar objectives;
Facility	means a new facility for the treatment and disposal of Residual Waste, which the WDA will procure as part of Project Transform or otherwise;
Food Waste	means waste derived from food materials. It typically consists of vegetable peelings, meat scraps, excess or spoiled prepared food, and other discards from domestic foods;
Green Waste	means is biodegradable waste e.g. vegetation and plant matter (includes the yard trimmings, leaves, shrubs, plants, grass, street trees, or tree trunks, park trees or tree trunks etc) from household gardens, local authority parks and gardens, and commercial landscape gardens;
Green Waste Standards	means those standards applicable to Green Waste, as set out in Schedule [•] to this MoU;
Household Waste	means as defined under Section 75(5) Environmental Protection Act 1990;
HWRC Standards	means those standards applicable to HWRCs, as set out in Schedule [•] to this MoU;
HWRC	means a household waste recycling centre;
Industrial Waste	means as defined under Section 75(6) Environmental Protection Act 1990;
Municipal Waste Management Strategy	means strategic framework for the management of municipal waste, jointly developed and subscribed to by the waste collection authorities (WCAs) and waste disposal authority (WDA) in an area;
Landfill	has the meaning attributed to it by section 65(1) of the Finance Act 1996 and "Landfilled", "Landfilling" and "Landfill Site" shall be interpreted accordingly;
Landfill Tax	has the meaning set out in section 39(1) of the Finance Act 1996;
"Landfill Allowances	means the landfill allowances trading scheme

Trading Scheme" or "LATS"	established pursuant to the Waste and Emissions Trading Act 2003 and the Landfill Allowances and Trading Scheme (England) Regulations 2004;
Legislation	means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom;
Local Area Agreement	means an agreement that contains (among other matters) mandatory outcomes in respect of municipal waste recycling and landfill diversion, which is developed by a local authority (all single and upper tier authorities) in agreement with local partners through the Local Strategic Partnership and in agreement with central Government.
MoU	means this memorandum of understanding (including its schedules);
MSW	means municipal solid waste;
Municipal Waste	means all Waste which by virtue of Legislation a local authority has a statutory duty or power to collect, including (without limitation) Household Waste, Commercial Waste and Industrial Waste, fly tips and street cleansing arisings;
Recycling and Composting Plans	means those plans set out in Schedule 6 to this SLA;
Recycling Credit	Means as section 52 of the Environmental Protection Act 1990 (EPA 1990) as amended by section 49 of the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005) and with the Environmental Protection (Waste Recycling Payments) (England) Regulations 20063 (the 2006 Regulations).
Residual Waste	means Waste that is not Green Waste or Dry Recyclable Waste;
Residual Waste Standards	means those standards applicable to Residual Waste set out in Schedule 4 to this MoU;
Review	means the activity described in clause [];
Review Procedure	means the procedure for review set out at clause [];
Statutory Targets	means all relevant statutory targets relating to recovery and recycling (so enshrined following the Waste Strategy for England 2007 issued by the Secretary of State pursuant to the EPA) together with the diversion requirements set out in the 1999 Landfill Directive (99/31/EC) requiring all Local Authorities to divert prescribed amounts of biodegradable municipal waste from Landfill, as enforced by the Waste Emissions and Trading Act 2003;
Warwickshire Waste Partnership	means the informal forum operated under that name by the parties to this MoU and any joint committee or other body or arrangement which replaces it

Waste	means Household Waste, Commercial Waste, Industrial Waste ascribed to it in Section 75 of the EPA;
Waste Disposal PFI Contract	means a contract entered into pursuant to the Government's Private Finance Initiative for services relating to the design, installation, operation, and maintenance of waste management facilities typically for a period of around twenty five (25) years;
WCA	means a waste collection authority pursuant to section 30(3) of the EPA, and for the purposes of this MoU means any of North Warwickshire Borough Council, Nuneaton and Bedworth Borough Council, Rugby Borough Council, Stratford-on-Avon District Council and Warwick District Council;
WDA	means a waste disposal authority pursuant to section 30(2) of the EPA, and for the purposes of this SLA means Warwickshire County Council;
WET Act	means the Waste Emissions Trading Act 2003, as amended from time to time.

b. Interpretation

- (i) Reference to any statute or statutory provision includes a reference to:
 - (a) that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated; and
 - (b) all statutory instruments or orders made pursuant to it.
- (ii) Words denoting the singular number only shall include the plural and vice versa. Words denoting any gender include all genders and words denoting persons shall include firms and corporations and vice versa.
- (iii) Unless the context otherwise requires reference to any clause, sub-clause or schedule is to a clause, sub-clause or schedule (as the case may be) of or to this agreement.
- (iv) The headings in this document together with all schedules or appendices to it are inserted for convenience only and shall not affect the construction or interpretation of this agreement.

2. Commencement and Duration

2.1 The Parties intend this MoU to be legally binding.

2.2 Subject to clause 2.3, this MoU and the rights and obligations of the Parties will take effect on the Commencement Date and will continue until the earlier of the following dates:

2.2.1 The expiry date of the Project Transform PFI Contract or any similar long-term contract to achieve similar objectives. This is a long-term agreement, the Project Transform is planned to be entered into between the CCC acting as lead authority on behalf of itself, the WDA and SMBC and its private sector partner in a manner that is consistent with the WJMWMS for the treatment of Municipal Waste. The contract will include similar terms relating to waste input as to those agreed in this MoU reflecting the Waste Collection Authorities contribution to the overall waste to be treated through the Project Transform PFI Contract;

- 2.2.2 the relevant provisions of the EPA and WET Act are amended or repealed or any other enactment is made such that this arrangement is rendered ineffective, inappropriate or unlawful; or
- 2.2.3 an agreement is reached pursuant to the Review Procedure that this MoU should end in respect of one or more WCAs (in which circumstance it shall be terminated in part in respect of the removed WCA and shall continue to have effect in respect of the remaining WCAs (if any)); or
- 2.2.4 the Expiry Date.
- 2.3 The Parties may agree to extend the term of this MoU for any further period by mutual consent.

3. Exclusivity of Waste

The WCA agrees to provide all of its Municipal Waste to the WDA.

4. The WDA’s Responsibilities and Commitments

The WDA will comply with the provisions of Schedule 1.

5. The WCAs’ Responsibilities and Commitments

The WCA will comply with the provisions of Schedule 2.

Waste Minimisation

The WDA and the WCAs shall, through the WJMWMS and the Warwickshire Waste Partnership, work together to develop the WJMWMS as necessary and appropriate to provide a waste minimisation strategy and implementation plan that is consistent with the Waste Strategy of England. The waste reduction strategy will be aimed at achieving the following:

	2010	2015	2020
Household waste per head of population not re-used, recycled or composted	310 kg	270kg	225kg

6. Statutory Directions and Notices

- 7.1.1 The Parties acknowledge that this MoU shall be treated as:-
- 7.1.2 a Direction of the WDA under Section 51(4) of the EPA, directing one or more WCAs to deliver the Waste collected by it to the Delivery Points (and to separate such waste before delivery if directed); and
- 7.1.3 a notice under Section 48(4) of the EPA that the WDA objects to any recycling arrangements made by the WCAs other than those identified in this MoU.
- 7.1.4 The Parties acknowledge that nothing in this MoU will prevent them from carrying out their respective statutory duties and responsibilities or unduly restrict the decisions to be made with regard to their respective functions.

7. Partnership Working

- 8.1 The Parties shall act at all times in a way that promotes effective partnership working. In particular, each Party will:-
 - 8.1.1 work in good faith with the other Parties towards the mutual advantage of the Parties;
 - 8.1.2 adopt an approach to identifying and resolving problems together rather than taking an adversarial stance;
 - 8.1.3 act reasonably and achieve, as minimum, their Statutory Targets and the Waste Strategy for England 2007;
 - 8.1.4 provide relevant information to the other Parties in plain English and in a form that is readily usable and in a full and timely manner. Relevant information shall include, without restriction or limitation:
 - (a) details of contractual arrangements (or amendments to existing arrangements) entered into by the Parties associated with their responsibilities under Waste Legislation;
 - (b) early warning of potential failure by a Party or its contractor in meeting their obligations under this MoU;
 - (c) actual failure by a Party or its contractor in meeting their obligations under this MoU;
 - (d) new initiatives, policies or emerging policies relating to the minimisation, collection, recycling and disposal of Waste;
 - (e) any other information that could reasonably be expected to impact upon this MoU or the Parties to this MoU;
 - 8.1.5 take all reasonable steps to mitigate any losses arising from a Party's failure under this MoU;
 - 8.1.6 work together with the other Parties to achieve the Statutory Targets and as far as is reasonable or practicable, to reduce the detrimental impact on the Parties and council tax payers of any one of them failing to carry out its obligations under this MoU;
 - 8.1.7 use all reasonable endeavours, working with the other Parties as appropriate, to minimise Waste and to improve the amount of Waste that is recovered and recycled in Warwickshire in line with Government targets, new Legislation and in particular the 1999 Landfill Directive, to educate the public and the commercial sector in Warwickshire about recycling schemes, and why their participation in these schemes is crucial, and to ensure that as much Municipal Waste as possible is (in order of priority) reduced, re-used, recycled or recovered;

8.1.8 work with the other Parties to;

- (a) influence behavioural change and to give people the knowledge and resources to take action at school, at work and in the community through Waste related education or awareness issues under appropriate campaigns where possible; and
- (b) make the strategic planning and development of Warwickshire's Waste services as transparent as possible to each other and to the public as a whole; and
- (c) research, develop and implement detailed proposals to achieve the purposes referred to in clause above; and
- (d) develop, implement, support and continue to enhance such schemes as are decided upon and in particular, to develop the WJMWMS; and
- (e) enhance economic development and employment opportunities as part of these proposals wherever possible whilst embracing the principles of sustainability; and
- (f) explore other appropriate partnership opportunities with both the private and public sectors in the pursuit of these aims and objectives.

9. Performance and Monitoring

- 9.1 The Parties shall monitor compliance with this MoU in accordance with the Payment and Performance Schedule.
- 9.2 The WDA may elect (at its own cost) to do its own monitoring to ensure compliance with the terms of this MoU.
- 9.3 The WDA will make available to the WCAs on a half yearly basis all general information collected in respect of the Project Transform PFI Contract, including delivery information and the rationale for rejection of Waste.
- 9.4 The WCAs and the WDAs will regularly review waste composition, volumes, all waste streams and such other matters as may be agreed between the Parties in order to identify compliance with this MoU or variations to performance that may be required in the future.

10. Reports and Review

- 10.1 Meetings of all parties to the WJMWMS will be held periodically within the ambit of the Warwickshire Waste Partnership to discuss and implement the provisions of this MoU. Senior waste management officers representing each Party will also meet together not less than once every 6 months. Such meetings will discuss and agree (inter alia) matters of common interest in the waste management area and the members will so far as reasonably practicable assist each other in the discharge of their respective statutory duties.
- 10.2 Any Party to this MoU shall be entitled to call for a review of this MoU to consider:
 - 10.2.1 amendments
 - 10.2.2 variations
 - 10.2.3 additions
 - 10.2.4 termination in whole or in part and for one Party or all of them ("**a Review**").
 - 10.2.5 improvements to service
- 10.3 A Review shall be called by a Party on notice in writing ("a Review Notice") to the other Parties setting out in detail and (if necessary providing evidence) of:
 - 10.3.1 the nature of the Review
 - 10.3.2 the reasons for it

- 10.3.3 the proposed action and/or solution
- 10.3.4 the Party or Parties potentially affected
- 10.3.5 how the proposed solution could or should be implemented.
- 10.4 The Parties shall meet to discuss and carry out the Review within the ambit of the Warwickshire Waste Partnership and to agree actions (or to agree an action plan leading to a decision and subsequent action (if any) to implement the decision) within two months of the Review Notice having been served. Following such Review meeting the Parties shall implement the actions (or action plan as the case may be) in accordance with the agreed timetable.
- 10.5 All Parties shall be issued with any Review Notice and shall be entitled to participate in any Review unless the relevant WCA and the WDA acting reasonably determine that the Review applies only to them and:
 - 10.5.1 will not affect any other Party; and
 - 10.5.2 is not relevant to any other Party; and
 - 10.5.3 the issues in question do not similarly apply to any other Party; and
- 10.6 This Review Procedure does not have the right to alter the aggregate waste input to the Project Transform PFI Contract without the WDA's agreement.
- 10.7 Notwithstanding the Review Procedure described above, the Parties shall meet within the ambit of the Warwickshire Waste Partnership to discuss the successes, strengths, weaknesses and issues of this MoU (the Periodic Review). The Periodic Review dates shall be on or about each second anniversary of the date of this MoU.
- 10.8 Where possible Periodic Reviews shall be programmed to suit each Party's political cycle and shall be brought forward or postponed a reasonable time to allow for elections and any new Elected Members to be *in situ*.
- 10.9 At least two months prior to each Periodic Review, each Party shall submit to the others a written review setting out any issues that Party wishes to cover at the Periodic Review together with any suggested solutions. The Periodic Review shall be in sufficient detail for the other Parties to be enabled to respond fully.
- 10.10 The Parties shall attend and participate in Reviews or Periodic Reviews in good faith, fairly, reasonably and in the spirit of partnering and having regard to each others' budgets and resources. The test of reasonableness shall be applied having regard to the WDA's obligation to consult any contractor appointed by it or on its behalf on any matter directly affecting or related to the Project Transform PFI contract and long term residual waste management.
- 10.11 No Party shall be required to agree any amendment, termination or variation to this MoU as a result of any Review or Periodic Review but shall always act reasonably and promptly.
- 10.12 Subject to all appropriate consultation and engagement processes, as a result of any Review or Periodic Review the Parties may agree to vary this MoU by way of a Deed of Variation or to terminate it in whole or in part.

11. Costs

- 11.1 Each party shall bear its own expenses, costs, risks and liabilities arising out of, or pursuant to, the preparation of this MoU, and the preparation of any proposals or Contracts pursuant hereto.
- 11.2 Each party shall bear its own expenses, costs, risks and liabilities arising out of, or pursuant to, its performance of this Agreement, and any proposals or Contracts pursuant hereto.
- 11.3 In the event the WDA fails to provide a Delivery Point, the WCA will be directed to a Contingent Delivery Point. The WDA will use its reasonable endeavours to agree with its Project Transform PFI Contractor that under such circumstances tipping away payments will be payable relating to additional haulage costs actually incurred by the WCA where this results.
- 11.4 The WDA shall be entitled to refuse its agreement to a change proposed by a WCA if the change would:
 - 11.4.1 have a materially detrimental effect on the WDA's obligations, rights or liabilities in respect of the Project Transform PFI Contract (and cannot reasonably be implemented so as to have no such effect); and/or
 - 11.4.2 put the WDA in breach of the Project Transform PFI Contract; and/or
 - 11.4.3 put the WDA, or another WCA to expense; and/or
 - 11.4.4 put the WDA in breach of Legislation; and/or
 - 11.4.5 be contrary to or inconsistent with a Direction made by the WDA under the EPA Act powers provided that in this case the WDA, acting reasonably, considers as part of the Review whether such Direction could or should be remade, augmented or amended; and/or
 - 11.4.6 have a materially detrimental effect on another WCA.
- 11.5 The WCA recognises that the WDA may incur costs as a consequence of late or non-delivery of waste within agreed ranges, resulting from waste composition being materially different than contemplated and/or from failure to comply with a Direction. The WCA agrees to pay reasonable costs to the WDA for, without limitation, any failures of the WCA to meet its obligations under this MoU or any Direction. The WDA has the right to waive this obligation for each and every occurrence at its sole discretion.

12. Decision Making

The Parties will work together to ensure there is clear accountability for all decisions made and actions taken, that decisions are made and actions taken in the best interests of the people of Warwickshire, that such decisions and actions take into account what is fair and equitable between the Parties.

13. Co-operation, Co-ordination and Information Exchange

- 13.1 The Parties will at all times use their best endeavours, by use of their own resources if necessary, to achieve the outcomes anticipated by this SLA.
- 13.2 At all levels, there will be close and regular contact between the WDA and the WCAs. Each Party agrees to ensure that their respective competencies and skills are pooled

where appropriate. Each party agrees to commit resources in terms of staff commitment, to ensure that the decision making of the parties is unimpeded, unhindered or delayed. Each party further agrees to use its power and influence for the positive benefit of the other Parties' scheme to minimise costs, and maximise operational and functional efficiencies of each project. Finally each Party will use their influence over land interests to facilitate the development of each others schemes at minimal cost.

13.3 Each Party will inform the other about changes in their policies and operational practices which are likely to have a bearing on the responsibilities of the other.

13.4 The Parties agree to the full exchange of information relevant to the progression of the mutual objectives of the Parties under this Agreement and in a manner so as not to disadvantage the other.

14. Confidentiality

14.1 Subject to clause 14.2 the Parties shall keep confidential all Confidential Information received by them in connection with this MoU.

14.2 Clause 14.1 shall not apply to:

14.2.1 any disclosure of information that is in the public domain at the time of disclosure or the receiving party can show is in, or comes into, the public domain after disclosure otherwise than by a breach of these conditions; or

14.2.1 the receiving party can show was already in its possession free of any such restriction prior to receipt from the disclosing party; or

14.2.2 the receiving party can show it has lawfully received from a bona fide third party without breach of any obligation to the disclosing party

14.2.3 any disclosure which is required by Legislation or by an order of a court of competent jurisdiction, any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory Board having the force of law;

14.2.4 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisors for the purpose of the examination and certification of the Authority's accounts or any examination or investigation; or

14.2.5 any disclosure that is required to ensure compliance with the Freedom of Information Act 2000 (**FOI**) and/or the Environmental Information Regulations 2004 (**EIR**).

14.3 Subject to the provisions of the FOI and EIR, in respect of all Confidential Information which may be disclosed by one party to the other or acquired by one party from the other under this Agreement, the receiving party undertakes: -

14.3.1 to keep the Confidential Information in strict confidence, and not to use the Confidential Information herewith other than for the purposes of this Agreement;

14.3.2 only to disclose the Confidential Information to such of its employees as genuinely need-to-know for the purposes of this Agreement, and then only on the understanding that they agree to be similarly bound by the provisions of this Agreement. The receiving party shall be responsible for ensuring that all such employees comply with the Confidentiality obligations of this Agreement;

14.3.3 not to disclose the Confidential Information to any third party whomsoever except with the prior written consent of the disclosing party;

14.3.4 not to copy or reduce the Confidential Information to writing except as may be strictly necessary for the purposes of this Agreement;

- 14.3.5 to return to the disclosing party on demand or termination all Confidential Information held in any form whatsoever including all copies thereof, and to destroy all notes and any other written reports or documents which may have been made by the receiving party and which contain any part of the Confidential Information, except as authorised in writing by the disclosing party, or as is strictly necessary to complete any outstanding obligations relating hereto between the parties.
- 14.4 The property in all Confidential Information disclosed by either party to the other pursuant to this Agreement shall, subject to any right of any other owner, remain vested with the disclosing party.
- 14.5 No licence or other rights are granted in the Confidential Information by the disclosing party to the receiving party.

15. FOI and EIR

- 15.1 The Parties acknowledge that, as public authorities, each Party is subject to the requirements of the FOI and the EIR and shall facilitate each other Party's compliance with its information disclosure requirements pursuant to the FOI or the EIR in the manner provided for in this MoU.
- 15.2 Where the Party receiving a Request for Information (the Responding Party) receives a Request for Information that another Party (the Other Party) is holding and which the Responding Party does not hold itself the Responding Party shall refer to the Other Party such Request for Information that it receives as soon as practicable and in any event within five business days of receiving a Request for Information and the Other Party shall:
- 15.2.1 provide the Responding Party with a copy of all such Information in the form that the Responding Party requires as soon as practicable and in any event within ten business days (or such other period as the Responding Party acting reasonably may specify) of the Responding Party's request; and
- 15.2.2 provide all necessary assistance as reasonably requested by the Responding Party in connection with any such Information, to enable the Responding Party to respond to a Request for Information within time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR.
- 15.3 Following notification under clause 15.2, and up until such time as the Other Party has provided the Responding Party with all the Information specified in Clause 15.2.1, the Other Party may make representations to the Responding Party as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, provided always that the Responding Party shall be responsible for determining at its absolute discretion:
- 15.3.1 whether Information is exempt from disclosure under the FOIA and the EIR;
- 15.3.2 whether Information is to be disclosed in response to a Request for Information; and
- 15.3.3 in no event shall the Other Party respond directly, or allow its contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Responding Party.
- 15.4 In the event of a request from the Responding Party pursuant to clause 15.2, the Other Party shall as soon as practicable, and in any event within 5 business days of receipt of such request, inform the Responding Party of the Other Party's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Responding Party under Section 12(1) of the FOIA and the Fees Regulations. Where

such costs (either on their own or in conjunction with the Responding Party's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Responding Party shall inform the Other Party in writing whether or not it still requires the Other Party to comply with the request and where it does st require the Other Party to comply with the request the 10 Business Days period for compliance shall be extended by such number of additional days for compliance as the Responding Party is entitled to under Section 10 of the FOIA. In such case, the Responding Party shall notify the Other Party of such additional days as soon as practicable after becoming aware of them and shall reimburse the Other Party for such costs as the Other Party incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

15.5 The Parties acknowledge that (notwithstanding the provisions of this clause 16) the Responding Party may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the discharge of Functions of Public Authorities under Part I of the FOI (the **Code**), be obliged under the FOI or the EIR to disclose Information concerning the Other Party or the Residual Waste treatment and disposal project:

15.5.1 in certain circumstances without consulting with the Other Party, or

15.5.2 following consultation with the Other Party and having taken their views into account.

15.5.3 Provided always that where 15.5 above applies the Responding Party shall, in accordance with the recommendations of the Code, draw this to the attention of the Other Party prior to any disclosure.

16. Joint Statements and Publicity

16.1 The WCA shall not make nor authorise any person on its behalf to make any public statement or issue any press release or publish any other public document relating to, connected with or arising out of this MoU or the Project Transform PFI Contract without consulting with the WDA in respect of its content and the manner of its presentation and publication.

17. Dispute Resolution

17.1 Any dispute or difference concerning this MoU shall be first referred to a meeting of each of the Parties involved in the dispute. The Parties agree to discuss and, in good faith, attempt to resolve any such dispute or difference in accordance with the spirit of partnership contained in this MoU.

17.2 In the event that the dispute is not resolved by the Parties within one month, the dispute shall be escalated to a meeting of the chief officers of each Party involved, who shall enter into good faith negotiations to resolve this matter.

17.3 In the event that the dispute remains unresolved for one month from the date of the referral pursuant to clause 17.2 above, or such longer period as the affected Parties may agree, it shall be referred to a Centre of Effective Dispute Resolution accredited mediator (the **Mediator**).

17.4 The Mediator shall determine the rules and procedures pursuant to which the mediation shall be concluded. The Mediator's determination in this respect shall be final save that:

17.4.1 each Party shall be entitled to make a written statement of its case to the Mediator prior to the commencement of the mediation. Such statement shall be provided to the

- Mediator not less than 14 days or such other period as may be agreed by the Mediator before the mediation is to commence; and
- 17.4.2 within 14 days of the conclusion of the mediation the Mediator shall provide a written report to the Parties which report shall set out the nature of the dispute and the nature of its resolution if any.
- 17.5 The Parties shall each bear their own costs incurred in relation to any mediation and the Mediator shall be entitled to be paid his reasonable fees, which the Parties shall pay in equal shares.
- 17.6 No Party shall be entitled to commence litigation procedures until the completion of the mediation in accordance with this clause 17. Nothing in this clause 17 (Dispute Resolution) shall prevent any Party at any time from seeking any interim or interlocutory relief from the Court.
- 17.7 For the avoidance of doubt, this Dispute Resolution Procedure is intended by the Parties to comply with but augment the provisions of the WET Act relating to arbitration.

18. Amendments

Following the execution of this MoU, no amendment or variation to this MoU shall be effective unless it is in writing and signed by a representative of each Party duly authorised (and notified to each Party) for that purpose.

19. Notices

19.1 No notice required to be served upon any of the Parties under this SLA shall be valid or effective unless it is in writing and served either:

19.1.1 by delivering the notice by hand to that Party at its address set out at the beginning of this MoU or to such other address as that Party may notify the other Party in writing, and the notice shall be deemed to have been duly served at the time it is so delivered provided a receipt is obtained; or

19.1.2 by posting the notice in a pre paid envelope sent by recorded delivery and addressed to that Party at its address set out at the beginning of this MoU or such other address as that Party may notify the other Party in writing and the notice shall be deemed to have been duly served two days after the date of posting.

19.2 Where any notice is deemed served pursuant to this Clause 19 after 4.00pm on any day, the notice shall be deemed to have been served on the next working day.

20. Entire Agreement

20.1 Except where expressly provided in this MoU, this MoU constitutes the entire agreement between the Parties in connection with its subject matter and, in the absence of fraud, supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this MoU.

20.2 The Parties acknowledge that they have not entered into this MoU on the basis of any representation that is not expressly incorporated into this MoU.

20.3 Without limiting the generality of the foregoing, no Party shall have any remedy in respect of any untrue statement made to him upon which he may have relied in entering into this MoU, and a Party's only remedy is for breach of contract. Nothing in this MoU purports to exclude liability for any fraudulent statement or act.

21. Agency

Nothing in this MoU shall constitute a legal partnership or agency between the Parties.

22. Assignment

This MoU is personal to the Parties and the rights and/or obligations under this MoU shall not be assigned, novated or otherwise transferred to any person other than to a successor body following a reorganisation within government or to a body which substantially performs any of the functions that previously had been performed by the affected Party. The Parties shall enter into such agreement and/or deed as may reasonably be required to give effect to such assignment, novation or transfer.

23. Waiver

Failure by one Party to enforce the provisions of this MoU or to require performance by the other Party of any of the provisions contained in this MoU shall not constitute or be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this MoU or any part thereof or the right of the former Party to enforce any provision in accordance with its terms.

24. Severability

If any term, condition or provision of this MoU shall be held to be invalid, unlawful or unenforceable to any extent by a Court of competent jurisdiction, such term, condition or provision shall be severed and shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this MoU.

25. Rights of Third Parties

The Parties agree that this MoU shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

26. Law and Jurisdiction

This MoU shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to clause 17 (Dispute Resolution), the English courts shall have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this MoU.

Schedule 1 – Waste Disposal Authority Responsibilities and Commitments

1. The WDA provide to the WCA adequate access to the Delivery Points.
2. The WDA provide adequate reception facilities and personnel at its Delivery Points.
3. The WDA has and will retain the responsibility for the disposal of Municipal Waste and for the provision and maintenance of HWRCs within its authority boundary.
4. The WDA will procure a Facility with the aim of delivering the WJMWMS and thereby avoiding or minimising any LATS liabilities and to meet the targets in the Waste Strategy for England 2007 for landfill for each of the key years before 2020. The WDA will develop this Facility in accordance with Best Value obligations relevant to the costs and liabilities of the WDA and reasonably those of the WCA. The WDA shall provide and make available to the WCA the Delivery Points and shall do so in accordance with the Delivery Point Standards.
5. The WDA shall have overall control of but shall continue to consult the WCA in respect of the following matters:-
 - The development of the facility requirements e.g. type of plant, capacity, inputs, tolerances etc.;
 - the content of the specification for the Facility;
 - the setting of selection criteria and contract award criteria;
 - the location of each Delivery Point, required turnaround times at Delivery Points and the content of the Delivery Point Standards.
6. The WDA shall take into account all reasonable comments of the WCA, subject to affordability, public procurement law (including the requirement for transparency and fairness in the procurement process) to the extent that such comments do not conflict with the views of other WCAs.

Delivery of Residual Waste to the Facilities

7. The WDA shall ensure that no WCA is placed in a significantly worse situation in regard to the delivery of waste to either the new Facility or any other existing facilities than is the current situation in respect of transport costs, collection strategies etc..
8. Where travel distances or times to the treatment facilities are significantly increased, the WDA shall provide appropriate transfer facilities or pay haulage costs at its option.
9. Prior to any new facilities opening and if new systems of working are instigated at any time by the WCA, the WCA and the WDA shall agree a waste delivery schedule in order to facilitate a managed flow of waste to the new Facility or transfer facility. The Parties shall seek to agree this waste delivery schedule with any neighbouring WCAs who deliver waste to the facility.

Schedule 2 – Waste Collection Authority Responsibilities and Commitments

Responsibilities

1. The Waste Collection Authorities (WCAs) have and will retain the responsibility for the collection of all municipal waste within their own authority boundary;
2. The method and frequency of the chosen collection system shall remain the sole responsibility of each WCA. However, the WCAs agree to work together through this MoU and the Warwickshire Waste Partnership to deliver the current WJMWMS and any future Municipal Waste Management Strategy and Municipal Waste Collection Strategy for Warwickshire or including Warwickshire in a way that does not adversely effect the obligations of the Project Transform PFI Contract;
3. Each WCA will seek to implement best practice where ever practicable to comply with the Waste Strategy for England 2007 and to follow good practice developed in consultation with Waste & Resources Action Programme’s general initiatives and particularly with advise coming from the Recycling and Organics Technical Advisory Team;
4. The WCAs shall continue to consult with the WDA on all collection systems and changes thereto and shall consider developing a Joint Waste Collection Strategy.
5. The WCAs agree to take in to full account any Joint Waste Collection Strategy when developing or altering their collection systems;
6. The WCA agrees to take into full account the requirements of the WDA in terms of the delivery of Residual Waste or appropriately recyclable, reusable or compostable materials to the relevant to WDA facilities.

Recycling and Composting Targets

7. The WCAs shall develop and maintain waste and recyclable material collection systems which will facilitate the achievement of the following recycling targets as set out in Defra’s Waste Strategy for England 2007. These targets should be regarded as both individual and collective targets.

Table 2

	In 2010	In 2013	In 2015	In 2020
Waste Strategy for England - Combined % of Household waste recycling	40	[]	45	50

8. The WCAs acknowledge the importance of commitment to and achievement of the targets in Table 2 above in order to (a) assist with the diversion of waste away from landfill and thus the avoidance of LATS penalties, and (b) gain PFI credits for the new Facility.
9. The WCAs shall work together and in conjunction with the WDA to ensure that their implementation plans are consistent with the Waste Strategy for England 2007, the WJMWMS, waste collection strategy and or any other collective WDA wide policies.

Dry Recyclable Waste

10. The WDA shall maintain a network of HWRCs at which it will accept Dry Recyclable Waste including waste electrical and electronic equipment (WEEE), wood, building materials, scrap metal, bulky green waste, bulky household waste etc.

11. WCAs may:

- arrange for the collection and/or sale of Dry Recyclable Material through a third party procured by the WCA;
- arrange for the collection and/or sale of Dry Recyclable Material through a third party procured by a consortium of WCAs;
- arrange for the collection and delivery of Dry Recyclable Material to a facility procured by the WDA on behalf of one or more WCAs.

12. The WDA shall pay an agreed recycling credit to the WCA for each tonne of recyclable material diverted from landfill and certified as having been recycled.

13. If the WCA opts to send materials to a facility procured by the WDA, it shall not receive a recycling credit. However, the WDA may arrange suitable payments to ensure that the WCA is in a no worse financial situation than had it procured the facility its self.

Commercial Waste and Industrial Waste

14. The WCAs shall not actively market Commercial Waste and Industrial Waste collection services either directly or through their trading companies or partners without the consent of the WDA. The WDA acknowledges that its consent will be given for the promotion of new schemes that target the recycling of 100% biodegradable Waste and in any event not unreasonably withheld.

Compostable Waste

Green Waste (windrow composting)

15. The WCAs shall implement systems for the kerbside collection of green, food and other organic waste commensurate with the targets for compostable waste set out in the WJMWMS and Table 2 above. With the prior written consent of the WDA, WCAs may take steps to process material pursuant to this clause.

Delivery of Residual Waste to the Facility

16. The WDA shall ensure that no WCA is placed in a significantly worse situation in regard to the delivery of waste to either the new Facility or any existing facilities than is the current situation.

17. Where travel distances or times to the treatment facilities are significantly increased the WDA shall provide appropriate transfer facilities or pay haulage costs at its option.

18. The WCAs recognise that the benefits of travelling to a transfer facility or direct to a treatment plant, will compensate for any minor increases of travelling time and mileage.

19. Prior to any new facilities opening and if new systems of working are instigated at any time by any WCA, the WCA and the WDA shall agree a waste delivery schedule in order to facilitate a managed flow of waste to the plant and or transfer facility. This waste delivery schedule shall also be agreed with any neighbouring WCAs and others who deliver waste to the facility.

Waste Volumes Composition

20. The WCA agree to provide the waste volumes and composition as agreed within the Project Transform PFI Contract and such future volumes and composition as may be agreed from time to time with the WDA.
21. The WCAs agree to undertake collection regimes that are consistent with the core principles in the Project Transform PFI Contract. This may include: -
 - the collection of new or different waste streams;
 - increases or reductions in the volumes or composition of Commercial Waste and Industrial Waste collected;
 - delivery of waste to new Delivery Points;
 - joint working with adjacent WCAs to reduce collection costs, to identify efficiencies in service delivery, and improve environmental performance.
22. The WCAs agree to co-operate with the WDA to deliver a cost-effective and efficient project under the Project Transform PFI Contract.
23. The WCAs acknowledge that they have considered the waste model documentation and undertake to use all reasonable endeavours to act in a manner that is consistent with the assumptions that underpin the waste model.
24. The WCAs agree to assist and cooperate with the WDA in order to find ways to deliver all the core assumptions (initial and ongoing) contained in the Project Transform PFI Contract, using their combined resources to do so.

- **Schedule 3 – Management Arrangement for the MoU**

Meeting arrangements

It is proposed that the MoU be managed through Warwickshire Waste Partnership.

Information Available

- Performance data relevant to this MoU
 - Project Transform PFI Contract information;
 - WCA collection information;