WASTE MANAGEMENT/RECYCLING PRIVATE FINANCE INITIATIVE (PFI) PROJECT
POSITION REPORT

1. Reason for Report
1.1 To advise and update Members on the current position regarding the procurement of the Waste Management/Recycling PFI Project.
1.2 To advise Members of the closure of contract programme and the remaining aspects which may affect that programme.
1.3 To secure agreement from Committee that the position being adopted by Officers in negotiating the outstanding issues is appropriate.

2. Introduction – No option but change
2.1 Work commenced on the Waste Management/Recycling PFI Project during April 1998 and an Outline Business Case (OBC) was submitted to the Scottish Executive in June 1998 as a formal bid for Level Playing Field Support (LPFS) funding to support the project. The Council were awarded conditional LPFS funding of £1.27 million per annum for 25 years in December 1998 and proceeded along the PFI route to procure a private sector partner to address the Council's waste management challenges for the next 25 years.
2.2 As a result of significant changes to European Legislation and the introduction of a National Waste Strategy for Scotland the initial Project detailed in the OBC, predominately a landfill solution at Aucheninnes, has changed to address the present challenges that face the Council. The additional funding required to meet these challenges is the subject of a bid to the Scottish Executive’s Strategic Waste Fund, and an update on the bid position will be given to Members at the meeting.
2.3 The Council's PFI Project will ensure progress towards sustainable waste management and it is designed to achieve the EU Landfill Directive diversion targets required by 2010, 2013, 2020, as well as increasing recycling.
2.4 The Council currently landfills 96% of its waste, the present Statutory Performance Indicator for recycling being only 4%.
2.5 The Council's current waste disposal business is not sustainable. Do nothing is not an option. There are also very real and immediate pressures. Facilities are currently inadequate and almost exhausted, large landfill tax increases are pending, European Directives and legislation continue to be more onerous, and there are increasing regulatory pressures from SEPA. To address these issues a significant and immediate financial investment is required which the Council has decided should be met through a PFI Project.
2.6 The EU Landfill Directive diversion targets are statutory and they require the amount of Biodegradable Municipal Solid Waste (BMSW) landfilled to be reduced as follows,
- BMSW reduction of 25% by 2010.
- BMSW reduction of 50% by 2013.
- BMSW reduction of 65% by 2020.
Further, the Scottish Executive has set a non-statutory target of 25% of Municipal Solid Waste (MSW) to be recycled or composted by 2006.
2.7 The key elements of the project are:
- Treatment, separation and disposal of collected household and commercial waste.
- Provision of recycling facilities.
- Closure and aftercare of existing sites (and any new sites developed within the framework of the PFI Project)
- Contract period 25 years
- Preferred Bidder – Shanks Waste Solutions.

2.8 From a policy context the Council’s Waste PFI Project has been tested both locally and nationally and fulfils the necessary scrutiny.
- It is a priority Project as detailed in the Council’s Corporate Plan.
- It meets the requirements of the Structure Plan.
- It meets the requirements of the National Waste Strategy (NSW) and National Waste Plan (NWP).
- The Project represents the Best Practicable Environmental Option (BPEO) within the Area Waste Plan (AWP) and has been approved as such by the Scottish Environment Protection Agency (SEPA).
- The Project addresses recycling and composting.
- The Project represents Best Value and Value for Money.
- The Project has the support of the Scottish Executive.
- The Project has Scottish Ministers’ approval in principle.

3. Background
3.1 The procurement of the Waste PFI Project has been carried out by a Project Team led by the Council’s Project Manager.
3.2 The Project Team consists of Specialist Advisers including,
- McGrigor Donald – Legal advisers
- Caledonain Economics – Financial advisers
- Babtie Group – Technical advisers,
supported by various Officers within the Council from Planning and Environment, Combined Services, Legal Services, Finance Services, Property Services and Human Resources.
3.3 Representatives from the Project Team and from the various Council Departments will be present at the Committee Meeting.

Previous Committee Reports
10 July 2001
3.4 The Environment and Infrastructure Committee agreed in July 2001 that Shanks Waste Solutions be identified as Preferred Bidder and to proceed with contract negotiations with the Preferred Bidder to finalise a Project Agreement, addressing the requirements of the Scottish Executive and SEPA as appropriate.
3.5 The July 2001 report also updated the Committee on various significant issues impacting on the Council in implementing the Project which would require to be addressed during the subsequent negotiations with the Preferred Bidder before a Project Agreement could be finalised. These were,
(i) Finance: Affordability and the Strategic Waste Fund support.
(ii) Planning Permission for the infrastructure required in the provision of the service.
(iii) Addressing collected commercial waste.
(iv) Existing waste disposal sites and their future use.
(v) Staff transfer under T.U.P.E.
(vi) External Audit opinion on the proposed “off balance sheet” accounting treatment of the project.
11 June 2002
3.6 The Environment and Infrastructure Committee received a further report in June 2002 which advised Members that the Preferred Bidder had been negotiating sub-contracts with various facility and service providers; one of which, Batnec Dumfries (Compact Power), had received planning consent for an Energy from Waste (efw) plant at Dargavel, Locharmoss, where fuel from the Bidder's Refuse Derived Fuel (RDF) Plant could have been thermally processed to generate electricity.

3.7 The technology used in the Energy from Waste process (Pyrolysis) is relatively new and the only Compact Power plant currently operating commercially is small scale and is still being used on a trial basis at Avonmouth, Bristol.

3.8 Members were advised that the Preferred Bidder considered that there would be insufficient operational hours completed within the timescale of the procurement programme to provide the necessary technical assurances for a long term commitment in a significantly larger plant.

3.9 Consequently the Preferred Bidder decided to discount the use of the proposed Compact Power Plant as it was believed not to be a realistic option at that time.

3.10 Members were advised that the provision of the Refuse Derived Fuel Plant gave the necessary flexibility to engage alternative processes for end use of that fuel and that the Bidder was pursuing these options with a view to submitting details with any associated implications. This remains an outstanding matter.

3.11 This change did not materially affect the Best and Final Offer (BaFO) and did not alter the position of Shanks Waste Solutions as the identified Preferred Bidder.

3 April 2003
3.12 A Special meeting of the Environment and Infrastructure Committee was held on 3 April 2003 when Members were advised of pressures from the Preferred Bidder which had potential to alter the tendered unitary charge to reflect changes in circumstances which the Preferred Bidder believed had occurred since submission of the BaFO during May 2001.

3.13 The April 2003 report detailed these pressures and sought Committee support for the negotiating stance being adopted by the Council's Negotiating Team so that the Project Agreement could be progressed on terms acceptable to the Council.

10 June 2003
3.14 At its meeting on 10 June 2003 the Planning and Environment Committee received a report following a meeting, at the Preferred Bidder's request, with the Preferred Bidder's Group Chief Executive.

3.15 The report informed Members that the Preferred Bidder had advised regrettably that they had been faced with various issues beyond their control which would not enable them to meet the programmed date of end July 2003 for signing off the contract. The issues included:

- A change of funder. Bank of Scotland having withdrawn through "sector aversion" arising from unrelated waste management projects and technologies.
- The need to have planning permissions for the main facilities in place before contract execution.
- The completion of the Project Agreement.

3.16 Further, the Preferred Bidder advised that they believed they would incur significant cost increases on the Project since submitting their BaFO and were seeking an increase in the unitary charge tendered to reflect the principal areas where these cost increases had occurred.
3.17 With regard to these additional costs and the Preferred Bidder's request to increase the unitary charge to reflect these pressures, they were requested to provide details so that the Council could scrutinise their claim before responding in detail.

3.18 Following scrutiny of these claims a report was considered and approved by the Corporate Management Team (CMT) which recommended the Project Team's response to the Preferred Bidder's requests.

9 September 2003
3.19 At the 9 September 2003 Committee meeting, Members considered a report on a "Response to Paper from the Dalbeattie Waste Action Group" and noted the Officer response which was subsequently passed on to the Action Group.

3.20 The Committee will also recall that a number of Members and Officials from Planning and Environment visited Italy on 16 and 17 September 2003 to inspect Eco-Deco Plants similar to the plant that the Preferred Bidder proposes to provide at Locharmoss Dumfries.

2 October 2003, Members Seminar
3.21 The Committee will further recall that a Seminar involving all Members was arranged on 2 October 2003 when the Waste PFI Project was fully debated by Members.

14 October 2003
3.22 At the 14 October 2003 Committee meeting, Members considered a report on the "Risk of Historic Contamination at the Council's Waste Disposal Sites" and noted how this issue was handled in the PFI procurement process.

3.23 The above background summary covers the areas and issues that were required to be remitted back to the Committee and CMT for discussion and decision following the Committee's approval to identify Shanks Waste Solutions as the Preferred Bidder and to delegate to Officers to proceed with negotiations with a view to concluding a Project Agreement.

4. Key Points

Current Negotiations

4.1 At the time of writing this report the Project Agreement (PA) is close to being agreed between the Preferred Bidder and the Council's Project Team. The draft Project Agreement has been issued to the Council's External Auditors and the Scottish Executive to assist in their project appraisal process.

4.2 Currently there remain some issues outstanding and Members will be updated on the position of these issues at the meeting. In summary these are;

(i) Acceptance of all costs by the Preferred Bidder for failure to meet Landfill Directive Limits.

(ii) Issuing of the Pollution Prevention Control (PPC) Permit for the Eco-Deco plant.

(iii) The provision of a Stewartry Transfer Station and the potential associated cost sharing issues.

(i) Acceptance of all costs by the Preferred Bidder for failure to meet Landfill Directive Limits.

- As previously explained in the report the main driver for the project is the diversion of biodegradable municipal solid waste (BMSW) away from landfill to meet the EU Landfill Directive Diversion targets.
- An essential part of that BMSW diversion is the Preferred Bidder's ability to secure an offtake contract for the Refuse Derived Fuel (RDF) produced by Eco-Deco.
• The Preferred Bidder is confident of signing such contracts not only for this project, but also for other projects across the country where they have already entered into contracts or are intending to further expand the Eco-Deco process.
• However, there is a recognised risk that for some part of the contract period an RDF offtake contract may not be in place. Under this scenario there is the potential that the Landfill Directive limits are breached and as a consequence a possibility that fines may be imposed on the Council.
• The Preferred Bidder and their Funders are prepared to accept the risk of these fines being levied in relation to failing to meet the Landfill Directive limits, but only subject to the following conditions;
  (i) the fines be capped at a level of £400,000 per annum for the full contract period.
  (ii) that any funding gained by the Council through tradeable permits, as a result of diversion targets being exceeded in the early years, be banked to accrue a fund to pay any potential fines in later years.
  (iii) that should the Preferred Bidder exceed their diversion targets as modelled in the contract in the early years, then their 50% share of any tradeable permit gains above the modelled level, will also be lodged in the fund.
  (iv) that the fund be jointly controlled and protected through appropriate arrangements.
  (v) that in a termination scenario the bank will not have the right to "set-off" the fund.
  (vi) that should there be no need to draw down the fund to address fines, then the fund will be redistributed in the proportions paid in.
  (vii) that the breach of the cap arising solely from the lack of an RDF offtake contract will not on its own trigger the termination notice procedure.
• In summary, the Council would be exposed to paying fines where their level exceeded the £400,000 cap, plus the level of the fund available at the time. Further, the Council retains the ability to terminate the contract when breaches of the Landfill Directive limits are as a result of other elements of the solution, e.g. recycling and composting.
• The Preferred Bidder has advised that their Funders view this issue as a potential deal breaker.
• The reasons offered for imposing these conditions by the Preferred Bidder and their Funders are as follows;
  • Standard practice for Project Company to cap its liabilities as set out in standard guidance.
  • The cap offered is proportionate to the size of the Project.
  • As the level of fines and the regime under which they are to operate has not been determined, the liability cannot be quantified.
  • To maximise the Funders ability to successfully appoint a replacement operator should it be necessary.
• There is a significant financial incentive on the Preferred Bidder to ensure that they do not exceed the Landfill Directive limits. The Preferred Bidder shall be liable for the payment of all landfill tax for that tonnage by which the allowable landfill limit is exceeded. This cost in its entirety would be automatically incurred by the Preferred Bidder.
In addition the Council can take comfort from the controls that the Funders will require in the funding documents and subcontracts to manage the RDF risk before it becomes an issue for the Council. These documents will require Council approval and will include obligations imposed on the Preferred Bidder that will ensure RDF contracts are signed well in advance of the requirement to have such a contract in place.

Up until this point in time, the Project Team’s position on this matter has been that the Preferred Bidder accept all fines for breaching the Landfill Directive Permits, and that the termination notice procedure be triggered when the landfill limits were breached. This position was to ensure that the Council’s interests were fully protected. This proposal from the Preferred Bidder and their Funders has come very late in the negotiations and was not anticipated.

What the Council needs to consider is whether the protections at both Project Agreement and Sub-contract levels provide a sufficient level of risk transfer on this important issue for the Council, and whether it is likely that the Council will be required to pay fines above the capped/fund provisions proposed.

A risk assessment of this matter is attached as Appendix 1.

Without an RDF offtake contract being secured, the Risk Assessment analysis indicates that there is potential exposure for the Council beyond 2013 and certainly towards 2020 in relation to having to fund fines above the £400,000 cap. However, in carrying out the Risk Assessment Analysis conservative figures for recycling and composting have been used for the 2013/2020 period and there is potential for the 2020 diversion targets to be met if the Council and the Preferred Bidder perform as predicted in relation to recycling and composting, even without an offtake contract.

Further, if Landfill Directive targets are exceeded in early years significant income may be available to support the fund proposed to address fines above the capped limit.

A full commentary on the risk assessment, including graphic illustrations, will be presented at the meeting.

It is recommended that the Committee agree to the Preferred Bidder’s proposals;

(i) that any fines be capped at a level of £400,000 per annum for the full contract period.
(ii) that any funding gain from tradeable permits in the early years be banked to accrue a fund to pay potential fines in later years.
(iii) that the Preferred Bidder’s share with the Council for any tradeable permit gain, above their modelled diversion targets in the early years of the Contract, be lodged in the proposed fund for the purpose set out in (ii) above.
(iv) that the Fund will be jointly managed and the Funders will not have “set-off” rights in any termination scenario.
(v) that should the fund not be drawn down to pay fines, then it will be redistributed in the proportions paid in.
(vi) that the breach of the cap arising solely from the lack of an RDF offtake contract will not on its own trigger the termination notice procedure.

Issuing of the Pollution Prevention Control (PPC) Permit for the Eco-Deco plant.

This matter is the subject of ongoing negotiation with the Preferred Bidder/Funders/SEPA and progress will be reported at the meeting.

The provision of a Stewartry Transfer Station and the potential associated cost sharing issues.
The Preferred Bidder has indicated that if an alternative site is proposed for the provision of a Transfer Station and Civic Amenity Site in Stewartry then it should be treated as a variation to the contract.

The Preferred Bidder has advised that if Edingham Industrial Estate were chosen as the preferred site then there would be no variation required.

There are appropriate mechanisms within the Project Agreement to scrutinise all costs associated with variation procedures and to determine whether costs will be positive or negative to the Council.

An initial desk top study and site inspections have been carried out by the Area Planning Manager and Local Plan Officer to assess whether there were more suitable alternative sites available.

The initial conclusion is that:
1. Abercromby Road Industrial Estate is the preferred site
2. Edingham Industrial Estate is the reserve site.

This matter will require further discussions between the Preferred Bidder and Planning Authority.

The initial desk top study is attached as Appendix 2 to this report.

It is recommended that Members note the outcome of the initial desk top study regarding a Transfer Station and Civic Amenity Site in Stewartry and the possible implications for the Council in relation to a Contract Variation.

Programme to Contract and Financial Closure
4.3 The programme being followed to achieve contract and financial closure is detailed on the attached Appendix 3.
4.4 The “In parallel” programme issues are entirely within the control of the Preferred Bidder and their Funders who have advised that full contract and financial closure will not be achieved this side of the new year and should be achievable before the end of March 2004.
4.5 Completion of the Project Agreement before 19 December 2003 remains a key target for the Council.
4.6 Members will be further advised on the situation at the meeting.

Project Sign Off by the Scottish Executive
4.7 Before the Council can formally sign the project, approval to do so must be sought and obtained from the Scottish Ministers. This approval process involves two main elements.
1. Confirmation from the Scottish Environment Protection Agency (SEPA) that the project represents the Best Practical Environmental Option (BPEO) and is in accordance with the requirements of the Area Waste Plan. The Council has received written confirmation that this requirement has been met and that SEPA have informed the Scottish Executive that this is the case.
2. The second element is more a requirement of the funding drawdown from the Scottish Executive and involves the submission of a Full Business Case, which includes the following key elements
   - Cost and affordability of the proposed solution
   - Value for Money analysis
   - Financial appraisal of the project
   - Proposed accounting treatment of the project.
The current situation with respect to this element is that the Council has submitted a draft Full Business Case to the Scottish Executive for approval. The Council has advised the Scottish Executive that it does not consider that the final agreed project will vary significantly from this draft Full Business Case and wishes the Scottish Executive to treat the submission as if it was the final agreed project. The Scottish Executive has informed the Council that it is happy to do this, but any funding award(s) made will be conditional, subject to final ratification of the completed Project Agreement. Members should note that this is common practice in the approval process for PFI s. Members will be updated on the position at the meeting.

Financial Implications
4.8 The various negotiations which have followed since the submission of the Preferred Bidder's BaFO, 10 May 2001, are summarised above in this report. Certain areas of these negotiations have had a direct effect on the unitary charge submitted at BaFO. Members are reminded that the whole procedure is a negotiated one and that changes from BaFO are a normal part of this process.
4.9 The actual unitary charge is viewed as being commercially confidential between the Council and Preferred Bidder and it will not be quoted within this report, the Corporate Policy Committee report, or verbally at this meeting.
4.10 As a result of negotiations the unitary charge has increased by some 10% above the level tendered at BaFO, excluding inflation. This level of unitary charge remains below that of the Reserve Bidder and below that of the Public Sector Compactor (PSC) which is the main determinant for value for money as judged by the Scottish Executive.
4.11 The funding request being made to the Scottish Executive for the Project along with the Council's current Revenue Expenditure Budget for Waste Disposal when compared to the service charge submitted by the Preferred Bidder leaves an affordability gap which the Council will have to fully fund before it can enter into the Contract.
4.12 The affordability gap arises as a result of the Scottish Executive advising that the Strategic Waste Fund will not fund,
- Waste growth and
- Landfill Tax increases.
The Executive has advised all Council's in Scotland of this funding stance.
4.13 The Director for Finance advises that a prudent estimate of this affordability gap for the Council in relation to the current funding package is on average, over the life of the contract some £250,000 per year. This must be viewed in the context of the funding bid to the Scottish Executive of some £4.37m per annum, which equates to more than £100m over the lifetime of the contract. A comprehensive report on this funding gap is included in the report to be presented to the Corporate Policy Committee immediately following this meeting.

Waste Growth
4.14 The waste growth is modelled within the contract as 2% for the first 8 years, 1% for the next 8 years and 0% for the remaining years to year 25.
4.15 Waste growth can be addressed and tackled by the Council through waste minimisation policies and campaigns and included in the funding bid to the Executive's Strategic Waste Fund are staff costs to employ a Waste Minimisation Officer for the 25 year contract period.
Landfill Tax Increases

4.16 All Councils in Scotland will face the onerous Landfill Tax increases to be implemented after next year. Tax will increase by £3.00/tonne/year up to a limit of £35.00 by 2011/2012. Beyond that figure it is unknown how much the tax will rise further. The current level is £14/tonne with a £1.00 rise next year to £15/tonne. The £1.00 increase is funded year on year by the Director for Finance from the Corporate Budget. It will be the £2.00/tonne extra that the Council will have to find. As it effects all Councils in Scotland there is no doubt that lobbying will take place to persuade the Scottish Executive to fund Councils to enable them to deal with these burdens. It is obvious that without the PFI mass diversion project the Council would be facing a severe Landfill Tax burden in future years. Further, through the PFI Project the majority of the Landfill Tax risk can be transferred to the Project Company in so much as it is associated with their solution infrastructure proposals. As discussed above the Council does have some influence, e.g. through waste minimisation policies and programmes, over the control of waste growth which has a direct influence on the affordability gap. This does then present the Council with the opportunity to lessen this affordability gap in future years.

4.17 It is recommended that the Planning and Environment Committee request the Corporate Policy Committee to approve a provisional allocation of no more than £250,000 per annum to the Waste Disposal Revenue Expenditure Budget in order to bridge the expected affordability gap on the project.

This matter will be the subject of a parallel report from the Director for Finance to the Corporate Policy Committee immediately following this Committee’s meeting.

Contract Variations

4.18 In previous reports to Committee, Members have been advised of the possibility of generating a contingency fund to cover any unforeseen variations to the contract which may occur as a result of new legislation or currently unquantifiable regulatory requirements by SEPA at sometime in the future.

4.19 There is also the possible scenario of an unforeseen pollution incident associated with historic contamination that the Council would have to address.

4.20 The Director for Finance has advised that the Council does not have the express statutory powers to create such funds or provisions. He further advises that should any demand arise in the future that requires additional funding from the Council to address a situation arising, as described above, then currently the only route available is to fund this from Service Reserves or General Fund Balances, which would be the situation for any service in a similar situation.

It is important that Members note this position.

5. Resume of Key Areas

5.1 These areas are of particular interest to Members and have been covered in previous reports to Committee. The current position on each of these areas is described below.

Planning

5.2 All appropriate planning permissions are in place apart from the Transfer Station in Stewartry.

5.3 Planning Permission was refused on appeal for the Transfer Station and Civic Amenity Site to serve the Stewartry Area.

5.4 The Council’s Combined Services have advised that they view the provision of a Transfer Station in Stewartry as an absolute necessity to assist in their collection of waste and segregated recyclate.

5.5 Their view is that a relay system involving collection vehicles to and from Dumfries (Eco-Deco) will not represent best value.
5.6 The matter of a Transfer Station for Stewartry has been discussed in 4.2(iii) above.

5.7 Various sites have been considered within the Stewartry Area by the Area Planning Officer and Local Plan Officer for discussion with the Preferred Bidder, and a preferred and reserve site have been identified as detailed in Appendix 2.

**Collected Commercial Waste**

5.8 Members were previously advised that charges levied by Combined Services for the collection of Commercial Waste may have to be increased as a result of the PFI contract and the unitary charge tendered by the Preferred Bidder.

5.9 The disposal element of these charges would be affected by the unitary charge per tonne of waste delivered to the Project Company.

5.10 Advice from the Director for Finance is that the two are not necessary linked and as such can be considered separately. **There will therefore be no necessity to increase the charges levied for commercial waste collection as a result of the PFI Contract.**

**Existing Waste Management Properties**

5.11 Galdenoch Waste Disposal Site: The Preferred Bidder will secure a new lease directly with the private landlord.

5.12 Aucheninnes Waste Disposal Site: The site will be transferred to the Preferred Bidder with an arrangement to secure the hand back of the Civic Amenity Site at the end of the 25 year Contract period.

5.13 Eco-Deco Field: This area of ground will be leased to the Preferred Bidder.

5.14 All other facilities either owned or leased by the Council will remain with the Council and the Preferred Bidder will be granted a Licence to Operate by the Council.

**Staffing**

5.15 The conditions relating to the transfer of staff to the Project Company have been previously agreed by the Council and are detailed in Appendix 4.

5.16 The Preferred Bidder and their funders accept this position, however they wish to place a cap on any future pay increases at 2% above the national level of pay increase agreed. The Council would therefore have to fund any increase above this level if it decided to pursue its own local individual pay award in excess of nationally agreed levels.

5.17 Further, as the Preferred Bidder is not able to operate a two tier workforce with regard to pay awards any funding by the Council in this scenario would be for all staff employed on the Council’s Project, not just transferees.

5.18 This is a low risk for the Council as it is unlikely that it would negotiate a wholly discrete pay award with its employees above national award levels.

5.19 It is recommended that the Council accept this position.

**External Audit**

5.20 As part of the Full Business Case appraisal process the Council’s External Auditors have to comment on the accounting treatment for the project, as proposed by the Council. The Council has provided analysis to the External Auditor that it should account for the project assets as ‘Off Balance Sheet’, the External Auditor’s provisional view is from the analysis provided that the Council is correct in taking this approach. The Director for Finance is in continuous dialogue with the External Auditors and sees no reason why they should adjust their provisional view.

5.21 The recommendations included in the External Auditor Report on the externalisation of the Council’s Care Homes have been used as a model for the Waste Management/Recycling PFI Project, details are provided in Appendix 5.
Waste Collection Service

5.22 The Waste Collection Service has received an award of £17.155 million from the Strategic Waste Fund for segregated collections. The award and introduction of these collections does not prejudice the PFI Project, but strengthens and complements the Council's plans for a fully integrated waste management service that addresses all recycling and mass landfill diversion targets over the next 25 years.

5.23 In the Area Waste Plan, (AWP), the PFI Project has been assessed as the Best Practicable Environmental Option (BPEO) for the Council. When segregated collections were added to the front end of the PFI Project's mass diversion processes the BPEO scored even higher.

5.24 The PFI Project is diversion driven and the enhancement of segregated collections will increase recycling and further add to the diversion of waste away from landfill.

5.25 The details of the segregated collections systems to be implemented will be developed in partnership with Combined Services to ensure full integration with the PFI treatment and disposal contract.

Contract Management

5.26 Once the Contract is let a contract management structure will be implemented to manage and monitor the contract and accredit all payments to the Project Company.

5.27 The Contract Management will be the responsibility of the Operations Manager, Strategic Waste Policy and Assets, within the Strategic Planning and Transportation Group.

5.28 Details of the proposed Contract Management Structure are included in Appendix 6 to this report.

Service Enhancements

5.29 It has always been intended to enhance the Waste Collection and Disposal Service as part of the PFI Project.

5.30 The costs associated with such an enhancement would be subject to a successful bid into the Strategic Waste Fund (SWF). The Scottish Executive have acknowledged that this would be an appropriate way forward.

5.31 An award of £17.155 million from the SWF for segregated collections is the first step towards these enhancements.

5.32 Infrastructure enhancements would include improved Civic Amenity/Recycling site provision, e.g. in Stranraer, Newton Stewart and Langholm, where no facilities exist at the moment, as well as additional bring areas for cans, glass, textiles etc. The additional Civic Amenity/Recycling sites would of course be required to secure planning consents and appropriate licences/permits from SEPA.

5.33 These enhancements have not been developed with the Preferred Bidder to date.

5.34 Once the Project Agreement is completed these enhancements will be investigated and any anticipated increase to the unitary charge considered in conjunction with the Scottish Executive to establish if additional funding from the Strategic Waste Fund will be made available. A phased approach to these enhancements with appropriate funding from the Executive is also a possible way forward which will be explored.

6. Consultations

The Corporate Management Team, the Project Team and the Group Manager Corporate Support and Governance and Group Manager Human Resources have been consulted and are in agreement with the terms of this report.
7. Recommendations
7.1 Note the current position on the procurement of the Project.
7.2 Note the Contract and Financial Closure Programme.
7.3 Members receive a further report in February 2004 requesting approval to sign the contract with full financial closure.
7.4 It is recommended that the Committee agree to the Preferred Bidder’s proposals;
(i) that any fines be capped at a level of £400,000 per annum for the full contract period.
(ii) that any funding gain from tradeable permits in the early years be banked to accrue a fund to pay potential fines in later years.
(iii) that the Preferred Bidder’s share with the Council for any tradeable permit gain, above their modelled diversion targets in the early years of the Contract, be lodged in the proposed fund for the purpose set out in (ii) above.
(iv) that the Fund will be jointly managed and the Funders will not have “set-off” rights in any termination scenario.
(v) that should the fund not be drawn down to pay fines, then it will be redistributed in the proportions paid in.
(vi) that the breach of the cap arising solely from the lack of an RDF offtake contract will not on its own trigger the termination notice procedure.
7.5 It is recommended that Members note the outcome of the initial desk top study regarding a Transfer Station and Civic Amenity Site in Stewartry and the possible implications for the Council in relation to a Contract Variation.
7.6 Members accept the proposed cap of 2% above nationally agreed pay increases proposed by the Preferred Bidder and that any funding required by the Council above that cap be for all staff employed on the Council’s project.
7.7 Request the Corporate Policy Committee to approve a provisional allocation of no more than £250,000 per annum to the Planning and Environment Committee in order to bridge the expected affordability gap on the project. The allocation to be confirmed once the project has achieved financial close.

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Date of Report: 5 December 2003

File Ref: amsra51
Background Papers:

Appendix 1 – Risk Management Analysis
Appendix 2 – Initial Desk Top Study, Stewartry Transfer Station
Appendix 3 – Programme to Contract and Financial Closure
Appendix 4 – Staff Transfer Conditions
Appendix 5 – External Auditor Report, Councils Care Homes Model
Appendix 6 – Proposed Contract Management Structure
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<td>2005</td>
<td>Construction Period 2 years Eco-Deco to February 2005.</td>
<td>All permissions in place apart from PPC Permit. Likely to be issued February 2004 (Draft)</td>
<td>Eco-Deco likely to be built within 2 years of Contract Commencement.</td>
<td>Low</td>
<td>Sign Contract.</td>
</tr>
<tr>
<td>2010</td>
<td>Initial period of fuel production until 2010 (first EU Directive Target 25% of BMSW diverted).</td>
<td>Production of fuel will involve 25% loss of weight due to moisture loss. Including composting/recycling mass balance indicates some 36,000 tonnes diversion against 26,200t requirement.</td>
<td>EU landfill targets exceeded (9,800t). Possible benefits for Council through sale of tradeable permits. £50/tonne estimate = £490,000</td>
<td>Low</td>
<td>Sign Contract. Ensure every effort being advanced to sign RDF offtake contract and/or identify other processes.</td>
</tr>
<tr>
<td>2013</td>
<td>Secondary period of fuel production until 2013 (second EU Directive Target 50% of BMSW diverted).</td>
<td>Continued production of fuel involving 25% loss of weight due to moisture loss plus composting/recycling. Requirement for diversion 37,100 tonnes. Achievable 36,000 tonnes plus.</td>
<td>Failure to meet diversion target by 1,100 tonnes maximum resulting in potential fines. Covered by £400,000 cap. (£100/tonne estimate = £110,000).</td>
<td>Low</td>
<td>Sign Contract. Ensure every effort being advanced to sign RDF offtake contract and/or identify other processes.</td>
</tr>
<tr>
<td>2020</td>
<td>Third period of fuel production until 2020 (third EU Directive Target 65% of BMSW diverted). This is critical period.</td>
<td>Increase of 15% but over 7 years with waste increasing due to growth. Required to divert 51,000 tonnes. 36,000 plus achievable through PFI Contract. Assumption that segregated kerbside collections would have delivered further recycling at least to a level of 10,000 tonnes (less than 25%). Therefore total diversion 46,000 tonnes</td>
<td>Failure to meet diversion target by 5,000 tonnes could result in fines of £500,000. Council could pay £100,000 maximum. Fines could grow through this 7 year period. However this assumes under performance of recycling through segregated collections.</td>
<td>Medium</td>
<td>Sign Contract. Ensure every effort being advanced to sign RDF contract and/or identify other processes. Consider termination procedures.</td>
</tr>
<tr>
<td>2029</td>
<td>Fourth period of fuel production through to Contract end 2029</td>
<td>Tonnage missing diversion continues at flat profile (assumed no waste growth) and recycling/composting continuing to increase.</td>
<td>Level of fines continue unless alternative operations provide solution.</td>
<td>High</td>
<td>Sign Contract. Work towards alternative solution with funders and potential new partner.</td>
</tr>
</tbody>
</table>
## APPENDIX 1

### SHEET 2

### WASTE MANAGEMENT/RECYCLING PFI PROJECT

**PROJECT COMPANY INCENTIVES FOR RDF OFFTAKE CONTRACT**

<table>
<thead>
<tr>
<th>TIME SCALE</th>
<th>SENSITIVITY</th>
<th>PROBABILITY</th>
<th>CONSEQUENCES</th>
<th>RATING</th>
<th>PROJECT COMPANY ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2005</strong></td>
<td>- Construction Period 2 years Eco-Deco to February 2005.</td>
<td>All permissions in place apart from PPC Permit likely to be issued February 2004 (Draft).</td>
<td>Eco-Deco likely to be built within 2 years of Contract Commencement. No incentive for PC.</td>
<td>Low</td>
<td>Searching for RDF offtake contract with pressure from Funders and Council</td>
</tr>
<tr>
<td><strong>2010</strong></td>
<td>- Initial period of fuel production until 2010 (first EU Directive Target 25% of BMSW diverted).</td>
<td>Production of fuel will involve 25% loss of weight due to moisture loss. Including composting/recycling mass balance indicates some 36,000 tonnes diversion against 26,200t requirement.</td>
<td>EU landfill targets exceeded. Possible benefits for Council through sale of tradeable permits. Incentive for PC to share in tradeable permit gain.</td>
<td>Medium</td>
<td>Searching for RDF contract with pressure from Funders and Council. Searching for contract becomes critical.</td>
</tr>
<tr>
<td><strong>2013</strong></td>
<td>- Secondary period of fuel production until 2013 (second EU Directive Target 50% of BMSW diverted).</td>
<td>Continued production of fuel involving 25% loss of weight due to moisture loss plus composting/recycling. Requirement for diversion 37,100 tonnes. Achievable 36,000 tonnes plus.</td>
<td>Failure to meet diversion target by 1,100 tonnes maximum Incentive for PC Fines 110,000 L/F Tax missed diversion 40,700 L/F Tax (RDF) 788,000</td>
<td>High</td>
<td>Securing RDF offtake contract critical Funders may procure new operator.</td>
</tr>
<tr>
<td><strong>2020</strong></td>
<td>- Third period of fuel production until 2020 (third EU Directive Target 65% of BMSW diverted). This is a critical period.</td>
<td>Increase of 15% but over 7 years with waste increasing due to growth. Required to divert 51,000 tonnes. 36,000 plus achievable through PFI Contract. Assumption that segregated kerbside collections would have delivered further recycling at least to a level of 10,000 tonnes (less than 25%). Therefore total diversion 46,000 tonnes</td>
<td>Failure to meet diversion target by 5,000 tonnes. Fines could grow through this 7 year period. However, this assumes under performance of recycling through segregated collections. Incentive for PC Fines 400,000 L/F Tax missed diversion 220,000 L/F Tax RDF 937,200</td>
<td>High</td>
<td>Securing RDF offtake contract critical Funders may procure new operator.</td>
</tr>
<tr>
<td><strong>2029</strong></td>
<td>- Fourth period of fuel production through to Contract end 2029</td>
<td>Tonnage missing diversion continues at flat profile (assumed no waste growth) and recycling/composting continuing to increase.</td>
<td>Levels of penalties continue unless RDF offtake contract secured or alternative operations provide solution.</td>
<td>High</td>
<td>New Operator</td>
</tr>
<tr>
<td>Criteria</td>
<td>Edingham Industrial Estate, Dalbeattie</td>
<td>Land adjacent Howies sawmill, Dalbeattie</td>
<td>Abercromby Road Industrial Estate, Castle Douglas</td>
<td>Oakwell Road, Castle Douglas</td>
<td>Concrete works adj Craignair Quarry, Dalbeattie</td>
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</tr>
<tr>
<td>Any natural or built heritage designations</td>
<td>Scheduled Ancient Monuments and Listed Buildings nearby. No Nature conservation designations would be affected</td>
<td>No built heritage or nature conservation designations would be affected</td>
<td>No built heritage or nature conservation designations would be affected</td>
<td>No built heritage or nature conservation designations would be affected</td>
<td>No built heritage or nature conservation designations would be affected</td>
</tr>
<tr>
<td>No adverse impact in terms of noise, air or water pollution</td>
<td>No adverse impact</td>
<td>Would be adjacent to existing sawmill, no adverse impact</td>
<td>No adverse impact</td>
<td>No adverse impact</td>
<td>Water course skirts the boundary of the site</td>
</tr>
<tr>
<td>No adverse impact on the amenity of the surrounding area – communities in the locality*</td>
<td>Could have an adverse impact on the future development of the industrial estate</td>
<td>No adverse impact on the amenity of the surrounding area</td>
<td>Could have an adverse impact on the future development of the industrial estate. However there is potential for future expansion of the site, subject to the necessary consents.</td>
<td>Could have an adverse impact on the neighbouring residential properties</td>
<td>No adverse impact on the amenity of the surrounding area</td>
</tr>
<tr>
<td>Proximity to RDF plant</td>
<td>18.8 miles</td>
<td>19.5 miles</td>
<td>21.6 miles RCV's housed at industrial estate</td>
<td>21.5 miles</td>
<td>22.8 miles</td>
</tr>
<tr>
<td>Any known contamination</td>
<td>No known contamination</td>
<td>Contamination possible given site was a former landfill site and scrap yard</td>
<td>No known contamination</td>
<td>No known contamination</td>
<td>Contamination possible given current use of site</td>
</tr>
<tr>
<td>Ground conditions</td>
<td>To be established</td>
<td>To be established</td>
<td>To be established</td>
<td>To be established</td>
<td>To be established</td>
</tr>
<tr>
<td>Accessibility of site</td>
<td>Good existing road access into industrial estate</td>
<td>Good existing road access into sawmill</td>
<td>Good existing road access into industrial estate</td>
<td>An access would need to be formed into the site</td>
<td>Site located close to a junction which is controlled by traffic lights</td>
</tr>
<tr>
<td>Visual impact</td>
<td>Site is not visible from main road, would be seen within context of industrial estate</td>
<td>Site well screened by existing trees, not on a through road</td>
<td>Site would be visible from A75 but would be seen within context of industrial estate</td>
<td>Site highly visible from A745 to Dalbeattie and from Ernespie Road</td>
<td>Site would be visible from the A711 to Castle Douglas</td>
</tr>
<tr>
<td>Surrounding land uses</td>
<td>Established business and industrial estate</td>
<td>Sawmill and coniferous plantations</td>
<td>Established business and industrial estate</td>
<td>Housing, established business and industrial estate and agricultural land</td>
<td>Agricultural land and operational quarry</td>
</tr>
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<td>-------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Local Plan designation</td>
<td>Allocated for new business and industrial development</td>
<td>No allocation</td>
<td>Established business and industrial area</td>
<td>Allocated for new business and industrial development</td>
<td>No allocation</td>
</tr>
<tr>
<td>Availability of site</td>
<td>Site in Council ownership</td>
<td>Private ownership Not available</td>
<td>Site in Council ownership</td>
<td>Private ownership</td>
<td>Private ownership</td>
</tr>
<tr>
<td>Overall Conclusion based on initial assessment</td>
<td>Reserved site given its close proximity to the RDF plant in Dumfries, the site has good access and there are no residential properties immediately surrounding the WTS and CAS</td>
<td>Site is not available, exclude from list</td>
<td>Preferred site as the RCV’s are already located on the industrial estate, the site has good access and there are no residential properties immediately surrounding the WTS and CAS. There is potential for an expansion to the industrial estate in future</td>
<td>Site not considered suitable given its close proximity to residential properties</td>
<td>A WTS and CAS at this location could have an impact on the adjoining water course, access to the site could be problematic and this site is the furthest away from the RDF plant in Dumfries</td>
</tr>
</tbody>
</table>

*noise, pests, odour, dust, litter, visual appearance or traffic

WTS – Waste Transfer Station
RCV – Refuse Collection Vehicle
RDF – Refuse Derived Fuel
CAS – Civic Amenity Site

Note = this study is without prejudice to detailed consideration of any future planning application.

For information; in relation to the dismissed appeal into the proposal to site a Waste Transfer Station at Edingham Industrial Estate, Dalbeattie the Scottish Executive Inquiry Reporter, on 1 October 2003, stated in the decision letter in his view "should the appeal be dismissed, the onus would be on the Council (having refused the application) to seek the most appropriate site for the WTS and CAS, in consultation with your clients".

In the light of this comment an initial desk top study has been carried out by the Area Planning Manager and the Local Plan officer, within an 8 km area of Aucheninnes to assess whether there were more suitable alternative sites available. This was done using a criteria based scoping methodology and site inspections. Five sites were identified and assessed against criteria relevant to this land use. Two sites are in Council Ownership and three in private ownership. The initial conclusion is that:-

1. Abercromby Rd Industrial Estate is the preferred site
2. Edingham Industrial Estate is the reserve site.

It should be noted that the landfill site at Aucheninnes was not considered as the Reporter had accepted in his report that it is no longer available for operational reasons.

As formal statutory consultations have not yet taken place to progress this matter there requires to be further discussions between the PFI Bidder and the Local Planning Authority on how this matter could be taken forward.
APPENDIX 3

PLANNING AND ENVIRONMENT
WASTE MANAGEMENT/RECYCLING PFI PROJECT
PROGRAMME TO CONTRACT AND FINANCIAL CLOSURE

(i) Project Agreement (PA)
- Issue of Final Draft PA 12 November 2003
- All Parties comment and return 19 November 2003
- Project Team and Council consider 24 November 2003
- All parties discuss and finalise 25-28 November 2003
- Project Agreement Completed 19 December 2003

(ii) Full Business Case (FBC)
- Draft issued to all Parties w/c 10 November 2003
- Scottish Environment Protection Agency Approval/Comment 24 November 2003
- Scottish Executive Private Partnership Unit informal Approval/Comment 8 December 2003
- Scottish Executive Strategic Waste Fund Informal Approval/Comment 8 December 2003
- External Auditors Approval/Comment 8 December 2003

(iii) In Parallel
- Shanks commence finalisation of sub-contracts 12 November 2003
- Funders commence due diligence on PA 12 November 2003
- Funders complete due diligence on PA 12 December 2003
- Shanks complete sub contracts February 2004

(iv) Council Approval
- CMT consider draft Committee Report January 2004
- Council Approval to Close Contract February 2004

(v) Contract and Financial Closure
- Director for Finance verifies Financial Model December 2003
- FBC finalised and signed off by Project Team December 2003
- Scottish Executive Approve FBC December 2003
- Ministerial announcement of funding award to Council January 2004
- Signing of Contract and Full Financial Closure March 2004
  - Interest Rate Set
  - Run Financial Model
  - Unitary Charge Agreed
  - Project Agreement signed
  - Direct Agreement signed
  - Sub-Contract Direct Agreements signed
  - Appropriate signatory – Chief Executive
  - Sub-Contracts/Facility Agreements signed Shanks/Banks/Sub-Contractors

(vi) Contract Implementation
- Immediate thereafter
As a result of discussions with the Trade Unions, the following conditions were jointly recommend for inclusion in the Project Agreement.

1. A clear statement that TUPE will apply to the contract.
2. Pay and core conditions would be the same as existing at the time of transfer and would be maintained and continue for the duration of employment or the contract whichever was the shorter.
3. Pay at transfer would consolidate basic pay plus any profit share and/or attendance bonuses as appropriate.
4. The Project Company would become an “admitted body” in relation to the Council’s pension scheme.
5. Any pay increases would not be less favourable than to other employees in the Project Company. Improvements would reflect those established through the Project Company’s negotiating machinery.
6. Should a transferred member of staff be offered a different position within the Company following transfer (eg promotion), the terms and conditions would be for negotiation by the parties. The opportunity to remain in the Council’s pension scheme in these circumstances would be a condition of the Project Company contract.
7. Pay increases for a transferred employee would include increases agreed with COSLA until 2004, and future years would mirror the percentage increases for Scottish Joint Council employees for the duration of employment of the individual or the contract period whichever is shorter.
8. Transferred employees will not be deployed by the Project Company outwith Dumfries and Galloway.
9. The Project Company will be required to offer re-training to transferred staff as the service develops.
10. The Project Company will recognise all Trade Unions representing transferred and establish a consultation framework.

The terms proposed above exceed the standard TUPE arrangements.
APPENDIX 5

FUNDAMENTAL PROCEDURES TO BE OBSERVED WHEN REVIEWING AND/OR CHANGING METHODS OF SERVICE DELIVERY

1. A Council should be able to demonstrate the basis on which the future demand for the service has been calculated and that the calculation has taken all relevant factors into account.

2. In calculating the future level of service capacity to be provided account should be taken of estimated available funding in order to avoid the creation of capacity which the council cannot afford to purchase.

3. Where a decision is taken to externalise a service hitherto provided by the council the extent to which existing capacity within the external sector is able to meet the estimated demand should be fully explored.

4. Where a Council proposes to move away from its existing pattern of in-house provision all potential alternative formats for delivering the service should be fully explored.

5. Any proposed change in the method of delivery of a major service should be examined by a multi-discipline team to ensure that an adequate breadth of expertise is available.

6. Any proposals should be evaluated from a corporate, as well as departmental perspective.

7. The impact of any change in the method of delivery of a major service should be fully assessed both in relation to the financial position of the department concerned and to the council’s overall financial position.

1. The Project accounts for waste growth, as being experienced nationally, in future years but also allows for the situation where processes and campaigns for reducing waste counters this growth.

2. The affordability calculations consider reasonably foreseeable waste growth and increased Landfill Tax charges.

3. The private sector is well established in waste management and the short-list of bidders/companies comprised organisations with significant experience and sufficient resources to provide the service.

4. The framework of P.F.I procurement is such that the Bidders are given maximum flexibility to propose their own solution in the provision of the service. The alternative of the Council providing the Service will be assessed using the Public Sector Comparator.

5. The Project is managed by a team which includes external advisers in the legal, technical and financial fields. An internal steering group of Council Officials is also in place representing Planning and Environment, Combined Services, Legal Services, Financial Services, Property Services and Human Resources.

6. The Project Team includes a representative from Finance and Corporate Services. There is also a Steering Group consisting of senior officers from the Council as mentioned in 5 above. The project is a priority project in the Council’s Corporate Plan.

7. The assessment of project affordability has been fully developed in terms of current and future revenue funding combined with external funding from the Scottish Executive to be made available specifically for the Project.
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<tbody>
<tr>
<td>8.</td>
<td>All key information should be recorded and retained to facilitate any subsequent scrutiny of the process.</td>
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<tr>
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<tr>
<td>8.</td>
<td>All contract documentation relating to various stages in the procurement process is retained and will continue to be developed and recorded to the point of contract signature.</td>
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<tr>
<td>9.</td>
<td>Any decisions taken when proposals, or the associated financial information, are tentative should be reviewed when the proposals have been more clearly defined, or the information has been more accurately calculated, to ensure that the original decisions remain valid and the council's preferred option.</td>
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<td>9.</td>
<td>P.F.I procurement negotiations continue subsequent to the receipt of bids. However all changes as a result of negotiations will be clearly documented and should not be substantive as, for example, the position on risk allocation has been detailed. All significant changes have been referred to the Corporate Management Team and/or Committee.</td>
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<tr>
<td>10.</td>
<td>In a tendering situation where a council is left with a restricted number of providers with whom to negotiate it should consider whether to re-tender to attract further bidders in order to improve the competitiveness of the negotiating process.</td>
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<tr>
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<tr>
<td>10.</td>
<td>The recommended number of tenderers for the final stages in a P.F.I type procurement, in this case three, is deemed sufficient.</td>
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<tr>
<td>11.</td>
<td>Where a council is providing the existing service in-house it should, where possible, produce a meaningful in-house bid to act as a comparator against which to assess any external bids.</td>
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<tr>
<td>11.</td>
<td>An in-house proposal known as the Reference Project was prepared and costed with risk adjustments to give a Public Sector Comparator.</td>
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<tr>
<td>12.</td>
<td>Information presented to members as a basis for taking key decisions should be in a format which is clear, consistent and balanced.</td>
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<tr>
<td>12.</td>
<td>Reports have been presented at key stages in the process which provides sufficient information while ensuring commercial confidentiality as necessary in what is an ongoing tendering process.</td>
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<tr>
<td>13.</td>
<td>The new service delivery arrangements should be monitored closely once they become operational to ensure that commitments entered into by providers are being fully delivered in accordance with the contractual terms and conditions agreed.</td>
</tr>
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<tr>
<td>13.</td>
<td>The new Project Company is required to set up full quality and environmental management systems which include appropriate monitoring procedures. The project delivery will be managed by experienced staff within Planning and Environment as part of the post contract management structure.</td>
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<tr>
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<tr>
<td>14.</td>
<td>An effective system should be put in place for monitoring the assumptions and projections made when the new method of service delivery was selected, including any value for money projections, to assess whether they are being achieved in practice.</td>
</tr>
<tr>
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<tr>
<td>14.</td>
<td>The contract is predicated on performance compliance with payment reduction mechanisms included for any shortfall in the standards of service. The charges are indexed annually at a rate below R.P.I to encourage efficiencies and to reflect the balance of capital and operating costs.</td>
</tr>
</tbody>
</table>
APPENDIX 6

WASTE PFI
POST CONTRACT MANAGEMENT

Introduction

The performance of Project Company in delivering the Service will require to be monitored and will be split between the following elements:-

- The requirement to ensure proper completion of infrastructure works integral to the project;
- The ongoing day to day service provision.
- The proper application of the performance and penalty regimes, and other finance related matters
- Input to best value/performance indicators
- Regular meeting of the Contract Development Group.

The post contract management will be carried out by the Strategic Waste Policy and Assets Unit within the Strategic Planning and Transportation Group. The day to day management will be the responsibility of the Operations Manager, Strategic Waste Policy and Assets reporting to the Group Manager and Corporate Director.
As well as addressing day to day operational issues associated with the PFI Contract the above team will deal with all Strategic Waste Policy issues and promote recycling and waste minimisation to address EU Landfill targets and waste growth.

This team will also implement the Area Waste Plan and National Waste Plan for Dumfries and Galloway Council.

It should be noted that the Waste Collection Service is not included in the PFI Contract and will be carried out in-house by the Council through its Combined Services Department. All waste collected by the Council's waste collection service, including recyclate, will be delivered to the Project Company.

- **Infrastructure Improvement**

  The infrastructure facilities and improvements being provided by Project Company will wholly be for their own operation of the 25 year contract term. However, there is an absolute necessity to ensure that these are fit for purpose, built as designed and provide the Council with the service outputs as described in the Project Agreement.

  The construction plans will be subject to Certificates of Quality Assurance from Projects Company's technical advisers. These technical advisers will oversee the construction and engineering contractors brought in to provide the infrastructure facilities and improvements.

  The method statements, detailed plans and project planning documentation will be made available to the Council's Group Manager Strategic Waste Policy and Assets for consideration and review to enable confirmation that the proposals are being constructed in line with the bid documents.

  The Council will have a right to inspect and open up any construction work being done should there be concern over quality standards. This right will be written into the Project Agreement in such a way as to ensure that only legitimate use is made of the provision.

  As part of the contract provision relates to supply of plant and equipment to carry out waste treatment, composting and other waste management measures, the Project Agreement has in place the requirement that certain bespoke systems which accompany the use of such equipment will transfer to the Council at contract completion.

- **Service Monitoring**

  The service monitoring regime focuses primarily on the Payment Mechanism and Performance Deduction Mechanism. In turn, these will throughout the contract term, be influenced by the Contract Change Procedures. Internal and external influences will play a part in any decision as to when the Change Procedure should be invoked.

- **Payment Mechanism**

  The Payment Mechanism is structured in such a way as to ensure proper operation of the facilities by Project Company. This is achieved without invoking unnecessary penalty provisions and in a way that makes a distinction between availability
deductions, soft shortfalls, which deal with performance issues and hard shortfalls, which deal with failure to achieve contract targets. The Payment Mechanism is based on the principal that payment is related to the tonnage of material being delivered for treatment and/or disposal. Initially the monthly payments will be based on agreed pre-estimates of annual tonnage with annual reconciliation to reflect actual tonnages.

- **Performance Deduction Mechanism**

Deductions will follow Council monitoring and interpretation of monitoring by SEPA. These procedures will be implemented by the Operations Manager Strategic Waste Policy and Assets and his staff on a Council wide basis.

The staff involved from Planning and Environment Services will not only carry out their own inspections of sites to ensure correct charging procedures and availability issues are being met, but will also interpret inspection reports from SEPA, to establish whether any deduction from the Unitary Charge should be made. Deductions will be applied in arrears as an adjustment to the charges Unitary Payment. In addition, the Council will invoke penalty points on the Project Company for any performance failure and there will be a limit on the number of penalty points that can be applied before contract termination procedures may be commenced. The Project Company will be obliged as part of their monthly report production to advise the Council of the appropriate penalty levels which will apply as a reduction to the monthly charge. The Council will inspect the various records and quality management procedures to verify the accuracy of these reports, and will also directly apply penalties where shortcomings in the service are identified.

- **Change Procedure**

In any 25 year contract it has to be recognised that circumstances will alter from the original letting date. This is particularly true in the waste management sector where new regulatory standards and performance requirements are a regular feature of legislation governed by the European Union.

As recognition of the potential for changes, the Council and Project Company have agreed to establish a Contract Development Group. This Group will not only consider issues necessary to deal with the Council's requirement to demonstrate Best Value, but will also look at areas where mutual benefit may accrue from alterations to the type of work being undertaken, or the opportunities for contract development.

A major external influence for consideration by the Contract Development Group will be the implementation of the Area Waste Plan and National Waste plan Within Dumfries and Galloway. The implementation of these plans will be in partnership with SEPA and will require input from the Council and waste management industry to deliver their aims. Likely contract areas which might be affected by the Area Waste Plan process are those relating to a requirement to deal with some waste streams by segregated kerbside collection, greater treatment of hazardous household waste and provision for systems to deal with electrical equipment.
• **Sharing of Potential Gains**

In the event that contract changes produce betterment to the financial performance of Project Company, there is a provision in the Project Agreement for Gain-Share between the parties. This is quite apart from the sharing refinancing gains (such changes being between the parties as of right), and is seen as a way of putting an incentive on to both parties to ensure that the most effective ongoing contractual arrangements are developed and implemented by agreement and to mutual benefit.

• **Staff Transfer Issues**

The Council and Project Company are agreed that the provision of the Transfer of Undertakings Protection of Employment (TUPE) Regulations will apply to the affected staff and there have been frequent meetings with relevant trade unions since the appointment of Shanks Waste Solutions as Preferred Bidder. The Council has also undertaken a programme of regular staff briefings since the start of the procurement process and this will continue until contract signature.

The position of staff transfers in this Contract is to some extent of less difficulty than might otherwise be the case in a major shift of work from the public to private sector. This is predicated on:

• The clear position taken by Project Company with trade unions and staff that existing terms and conditions will be protected;

• Continuity of supervisory positions at existing facilities;

• A clear undertaking by Project Company to become an admitted body within the Council's Local Government Pension Scheme.