

Delegated Decision Report



31 January 2023

MILTON KEYNES WASTE RECOVERY PARK (MKWRP) – CAPITAL INVESTMENT PROGRAMME

Name of Cabinet Member **Councillor Rob Middleton**
Cabinet Member – Resources and Innovation

Councillor Paul Trendall
Cabinet Member for Customer Services

Report sponsor **Stuart Proffitt**
Director Environment and Property

Report author **Nicholas Hannon**
Head of Environment and Waste
Nicholas.Hannon@milton-keynes.gov.uk

David Proctor
Waste Services Client Manager
David.Proctor@milton-keynes.gov.uk

Exempt / confidential / not for publication	Yes (Paragraph 3 (Information relating to the Financial or Business Affairs of the Authority) of Part I of Schedule 12A of the Local Government Act 1972)
Council Plan reference	Not applicable
Wards affected	All wards

Executive summary

This Delegated Decision outlines an investment programme and an enhanced security package for Milton Keynes Waste Recovery Park (MKWRP). The Authority will continue to yield the financial benefit of the asset over the contracted term. The Delegated Decision will provide greater security of sustained service provision, contractual retention and an improved financial position for the Authority.

1. Proposed Decisions

- 1.1 That the press and public be excluded by virtue of Paragraph 3 (Information relating to the Financial or Business Affairs of the Authority) of Part I of Schedule 12A of the Local Government Act 1972.

- 1.2 That the Residual Waste Treatment Facility contract be varied, via a Deed of Variation as set out in part 4 (Implications of the Decision) of this report.
 - 1.3 That authority be delegated to the Director Environment and Property, in consultation with the Director Finance and Resources (s151) and the Director of Law of Governance, to agree amendments to the Deed of Variation and to finalise this and any other formal documents required to affect the agreed position.
 - 1.4 That authority be delegated to the Director Environment and Property and the Director Finance and Resources (s151) to negotiate and agree the most appropriate financial approach to consolidating the initial £5million capital investment sum and the increase in termination sum uplift, working in partnership with Thalia.
 - 1.5 That it be noted that the core beneficial outcomes of the continued operation of the MKWRP are:
 - a) that the asset owned by MKCC outright;
 - b) ongoing and sustained provision of £0 per tonne gate fee;
 - c) increasing recycling rates; and
 - d) significantly reducing landfill rates.
 - 1.6 That the proposed Capital Investment Programme be reviewed annually by the Head of Environment and Waste, and that further executive decisions be taken as required until 31 July 2026.
 - 1.7 That the resource allocation and spend approval of £6.6million be approved within the 2023/24 capital programme.
 - 1.8 That authority be delegated to the Director Environment and Property to commission an in-depth review of the service provider and parent company accounts and provisions in relation to MKWRP (past of future) and similar UK based assets with other Authorities.
- ## 2. Why is the decision needed?
- 2.1 Milton Keynes Waste Recovery Park (MKWRP) is critical asset in ownership of the Authority providing significant sustainable, financial and service benefits.
 - 2.2 Since 2018 Milton Keynes City Council has worked to deliver the UKs first working gasification. Over the past 12 months we have seen a strong operation performance and availability of the key asset known as the 'Advanced Thermal Treatment' (ATT) facility. This is referenced and expanded upon in Annex E – Technical Note: MKWRP Operational Performance. Delivering performance of the asset of this level is positive and is in itself an achievement particularly at recent availability figures given some other plants in the UK are not operational.
 - 2.3 The plant itself is a source of Civic pride providing electricity to up to 11,000 homes, disposing of waste produced in Milton Keynes within the boundaries of the city and was referred to in the application for City Status.

- 2.4 Whilst the Authority owns the asset a contractor has been procured to deliver 15-year operations with zero gate fee that has insulated the Authority and therefore the taxpayer from wider market pressures for waste disposal. It has also provided flexibility and operational availability for waste collections.
- 2.5 Over the past three years the waste market has hardened, acquisitions and mergers have soared further reducing competition. This has included the MKWRP operator Amey, the sale of which to One Equity Partners and Buckthorn Partners completed in October 2022. This has involved the creation of a separate company called Thalia, which comprises of Ameys former waste treatment division and is wholly owned by parent company Ferrovial.
- 2.6 In order to sustain the strong operational performance as denoted in Annex E – Technical Note: MKWRP Operational Performance maintenance costs have been found to be higher than anticipated in the profiled replacement and maintenance costs for the contract. The plant has also suffered from a major issue with the boilers which are a key competent of the ATT.
- 2.7 The original business case outlined that the waste disposal budget would be used to repay the £129M capital sum of the facility. This is currently being realised financially. However, maintaining the current £0/t gate fee is a tactical priority for the Authority for 2033 and beyond. This is a core driver for the investment strategy and to ensure contractual security.
- 2.8 Furthermore, the security of service provision at MKWRP is even more imperative beyond that of waste disposal. As part of the new Environmental Services Contract the facility will be providing electricity via private wire to our landscaping, street cleansing and internal fleets. As part of phase 2 this will expand to our Refuse Collection Vehicle fleet. The facility may be utilised for heat provision in the future to residents and businesses in Milton Keynes.
- 2.9 A Deed of Variation to the contract has been negotiated which provides for an asset investment from the Authority into the asset and offsets some of the profiled commercial risk that this would have otherwise created for the new delivery vehicle. This in returns yields an improved securities package for the Authority as well as an enhanced asset and further contributes to a supported position to enable the contract extension or reprovision in 2033.
- 2.10 The negotiations held with Thalia were productive and the key commercial positions were outlined. These are captured in detail in Annex A - Agreed Memorandum of Understanding. However, a summary of the positions and viewpoints from each party are outlined in Annex B – Heads of Terms Position Summary.

3. Implications of the decision

Financial	Y	Human rights, equalities, diversity	N
Legal	Y	Policies or Council Plan	Y
Communication	N	Procurement	Y
Energy Efficiency	N	Workforce	N

a) Financial implications

The project will be financed £4.542m from New Homes Bonus (2023/24 provisional allocation) and the remainder of £2.052m from one off funding.

In approving the consolidation and transition of the contract the Council is agreeing to:

- Finance an initial capital investment of up to £5M in year one of a three year capital programme for the RWTF;
- Provide the framework for further works to be financed in Years 2 and 3 subject to a review process that will go through the Authorities respective governance processes; and
- Finance a new shredding facility and associated equipment for shredding of bulky waste at the Waste Transfer Station at £1.6M and the transport of material to MKWRP. There are no new revenues costs arising from either of these two investments.

Commercial financial implications are provided in Annex C - MKWRP Capital Investment Programme.

This financial approvals here are for 23/24 only and is not committing us to future spend in 24/25 and 25/26. However, the commercial principles without further business case development and being subject to further executive decision making. State subsidy limits any such payment to £4.99M in a single year, this is described within the subsidy note within Annex D. Anything above that needs to be referred to the Competitions Authority. For 24/25 and 25/26 Officers will prepare a detailed guidance note to capture the justification and reasoning for future cases for Thalia to submit in good time.

Grant Thornton (Financial Specialists) will undertake a forensic accounts review and to consider both the Thalia position on MKWRP, as well as anything linked to the other three assets, like MKWRP within the UK portfolio. This is for us to get a transparent independent assessment.

b) Legal implications

The legal advice note on subsidy control is provided in Annex D. It is not felt that the current proposals within the MoU will cause any concern for state subsidy because the focus is on capital investment on a plant wholly owned by the Local Authority.

The boilers are subject to meet the requirements of the Pressure Systems Safety Regulations hence the requirement for a certifier approved by the insurer.

Legal Implications are provided in Annex C - MKWRP Capital Investment Programme.

c) Procurement implications

Procurement Implications are provided in Annex C - MKWRP Capital Investment Programme.

d) Other implications

Other Implications are provided in Annex C - MKWRP Capital Investment Programme.

4. Alternatives

4.1 Do nothing.

From a purely legal perspective the risk is with the contractor. Therefore, any action taken is done at additional cost to the Authority and therefore, the taxpayer of Milton Keynes. Therefore, one option would be for the contractor to 'take the strain' and procure all additional capital requirements for the plant including the new boilers. This could trigger an insolvency of the contractor, a termination scenario and distressed procurement. It is anticipated that the favourable financial terms of the current contract would unlikely be reobtained.

4.2 Option 1 – Terminate and re-procure.

To terminate the contract the Authority would have to have good reason to do so. As referred in this report the asset has performed well and this performance is demonstrated in Annex E – Technical Note: MKWRP Operational Performance. As such, with a strong performance of the asset and the ongoing delivery of original the financial benefits continuing to be profiled then this the reasons to pursue this option are not immediately evident. Furthermore, the same technology that drives the Advanced Thermal Treatment plant is in place in Derbyshire and the plant has not been fully functional since entering commissioning. The Banks in Derbyshire have recently determined there is “no liquid market” i.e. it is unlikely that another tenderer would be willing to tender to take over the ATT and its issues. Even with a functional asset as MKWRP is demonstrable to be it is highly unlikely that a procurement would render the current beneficial contractual terms the Authority currently has - in particular the £0 gate fee. This option is not recommended.

4.3 Option 2 – Capital Investment Programme (without negotiation).

The Authority could pursue an option whereby it funds the Capital Investment Programme based on the terms outlined within this paper. However, this option sees a simple pass through of cost for the asset from the contractor through to the Authority. This process will still see a publicly visible procurement on capital investment and the respective business case sign off. This option would mean that the contractor will have increased buoyancy to pursue the investments and enhancements to the plant identified. The forthcoming sale of the parent company is a driver for a non-negotiated position as it will demonstrate a highly committed landlord willing to fund all additional capital costs on its asset. This would stabilise the contract by the Authority acting as a financial backstop to finance all capital cost. This would as a result provide increased surety on contractor retention.

However, this must be balanced against the need for best value and advice on subsidy control. As such, while this scenario would create the requirement sought by the Authority to generate some additional security this option does not taper the capital investment programme in the same manner as presented and would not demonstrate best value. This option would lack the securities that the Authority has secured through negotiation which will manifest themselves through the Draft Deed of Variation No 4 of Project Agreement in relation to Residual Waste Treatment Contract. Therefore, this option is not recommended.

4.4 **Option 3 – Capital Investment Programme with negotiation (Recommended Option)**

This is the recommended option.

The current contractor is looking to stabilise their operational performance to a breakeven position. There is a risk arising from the sale of Amey that the new delivery vehicle could enter distress if it not financed from its core shareholder which would render a forced termination scenario. Retention of the contractor is a key outcome for the Authority and while having previously negotiated on liabilities of performance deductions this option provides a revised and recalibrated commercial position in what is a fluid delivery market.

In order to maintain the favourable financial conditions of the existing contract the negotiated position delivers on providing:

- comfort on ongoing contractual retention
- protection sought from the capital investment

5. Timetable for implementation

5.1 Councillor information sessions were held on the 16 January 2023.

5.2 Thalia have indicated that they initially intended to procure the boiler for installation in June 2023. However, since procuring a new certifier this has been extended to January 2024. The lead time for boilers is between 6 – 9 months. Given the requirement for re-engineering the boiler design then the latest time to order the boiler would be March 2023.

5.3 If approval is granted, the Deed of Variation in the draft form outlined in Annex B, and any other necessary formal documents will be finalised and agreed by the Council and the Contractor by end of February 2023.

List of annexes

Annex A – Agreed Heads of Term for the variation.

Annex B – Heads of Terms Position Summary

Annex C – MKWRP Capital Investment Programme

Annex D – Subsidy Control Note

Annex E – Technical Note: MKWRP Operational Performance

Annexes A, B and C are not for publication by virtue of Paragraphs 3 (Information Relating to the Financial or Business Affairs of the Authority) and 5 (Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.) of Part 1 of Schedule 12A of the Local Government Act 1972.

List of background papers

- “Residual Waste Treatment Facility – Deed of Variation Delegated Decision” of 22 February 2018 - <https://milton-keynes.cmis.uk.com/milton-keynes/Calendar/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/5899/Committee/1174/Default.aspx>
- “MKWRP Commercialisation - Deed of Variation Delegated Decision” of 24 September 2019 - <https://milton-keynes.cmis.uk.com/milton-keynes/Calendar/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/6237/Committee/1258/Default.aspx>