

DECISION-MAKER:	CABINET COUNCIL
SUBJECT:	MARCHWOOD ENERGY RECOVERY FACILITY (ERF) CONCILIATORS REPORT ON PASS-THROUGH COSTS
DATE OF DECISION:	24 NOVEMBER 2008 21 JANUARY 2009

REPORT OF: CABINET MEMBER FOR ENVIRONMENT AND
TRANSPORT

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STATEMENT OF CONFIDENTIALITY

NOT APPLICABLE

SUMMARY

This paper indicates the Conciliators recommendations, as a result of a joint Conciliation process between the Waste Disposal Contractor Hampshire Waste Services (HWS) and the Authorities (Southampton City Council, Hampshire County Council and Portsmouth City Council) on the value of additional (pass-through) costs for the Marchwood Energy Recovery Facility (ERF) plant.

RECOMMENDATIONS:

Cabinet

- (i) To approve the recommendations, contained in the Conciliators report, on the level of costs owing to the Waste Disposal Contractor, as part of a complete and final settlement of Marchwood pass-through costs.
- (ii) To approve, in accordance with Financial Procedure Rules, capital expenditure of up to £4,000,000 to meet outstanding pass-through costs, subject to Council approval to add a scheme to the Environment and Transport Capital Programme funded by unsupported borrowing.

Council

- (i) To approve, in accordance with Financial Procedure Rules, the addition of £4,000,000 to the Environment and Transport Capital Programme for the 'Waste Disposal Contract – Pass-through Costs' scheme, funded by unsupported borrowing.

REASONS FOR REPORT RECOMMENDATIONS

1. The Conciliation process has previously resolved outstanding financial disagreements between the Authority and the Waste Disposal Contractor in the case of the Chineham and Portsmouth incinerators without recourse to the courts. All parties are in agreement with the Conciliators recommendations for the Marchwood Energy Recovery Facility.

CONSULTATION

2. External: Hampshire County Council, Portsmouth City Council.
3. Internal: Executive Member for Environment and Transport; Head of Waste and Fleet Transport; Legal, Democratic, Financial and Property Services.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

4. Alternative options would be to either pay 100% of the claim or to move to binding Arbitration under waste disposal contract conditions.

DETAIL

5. Under the terms of the Council's joint waste disposal contract with Hampshire County Council and Portsmouth City Council, the Contractor (Hampshire Waste Services) is entitled to reimbursement of certain costs associated with the provision of infrastructure i.e. costs may be "passed-through" to the client. One such cost is in relation to the provision of energy recovery incinerators where, as a consequence of planning requirements, enhanced architectural standards (over and above a basic box type design) or a change of site have been necessary to enable the plants to be built.
6. The Authorities and HWS were unable to reach agreement on the level of pass-through costs applicable to the construction of the 3 ERF plants and therefore as allowed for in the Waste Disposal Contract entered into a Conciliation process. The Conciliator was jointly chosen and is a chartered civil engineer and Fellow of the Institute of Civil Engineers, a specialist in dispute resolution, a practicing conciliator/mediator since 1991 and is currently Chairman of the ICE's Disputes Resolution Panel. He has achieved an outcome for both the Chineham and Portsmouth Energy Recovery Incinerators acceptable to all parties and was therefore chosen to undertake the conciliation process for the Marchwood Energy Recovery Incinerator.
7. The Conciliation procedure provides a structured framework against which the Contractor's submission may be independently evaluated without prejudice. It requires the parties involved to sign up to an Agreement for the dispute or difference that is being considered under the Procedure and to be jointly bound to pay the Conciliator's fees. It further requires the Conciliator's signature in acceptance of the appointment to conduct the conciliation in accordance with the Procedure. In particular the conciliation process will assess the following:
 - Examine the contractual entitlement for a change of site pass-through costs under the Waste Services Contract.;
 - Comment upon the "value for money" aspect of the Marchwood ERF plant when compared with similar facilities; and
 - Determine the detail/extent of examination required with regard to the submitted costs and level of supporting information.

8. Level of Contractor Claim and Conciliators Recommendation

Site	Contractors architectural and change of site claim at July 1998 prices	Conciliators recommendation for settlement of claim at 1998 prices
Marchwood	£14,012,986	£13,332,036

The Contractor has confirmed that as part of any acceptance of the Conciliators recommendations, they will waive any additional claims for loss of electricity revenue or any other claim, due to planning delays.

9. Appendix 1 contains a detailed summary of the Conciliators recommendations on Marchwood pass-through costs.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

10. The pass-through costs apportioned under the revised Tripartite **at 1998 prices** are shown in the following table:

Facility	Pass-through cost	Southampton % share	Overall capital cost to Southampton
Marchwood ERF	£13,332,036	11.48%	£1,530,518
Portsmouth ERF	£6,804,066	11.48%	£781,107
Chineham ERF	£4,664,506	11.48%	£535,485
Total	£24,800,608		£2,847,110

11. The council's share of the outstanding pass-through costs, allocated under the revised Tripartite split, is estimated to be between £3.5 million and £4.0 million **at 2008 prices**.
12. The Authorities are currently working with the Contractor on the details for paying a one-off capital sum, rather than ongoing contract fixed fees. In order to take advantage of this opportunity, Council are recommended to approve the addition of a scheme of £4,000,000 to the Environment and Transport Capital Programme, funded from unsupported borrowing.

Revenue

13. The Council's share of the costs of the conciliation process will be met from existing budgets.
14. The current revenue budget to support the payment of the pass-through costs as part of the contract fixed fee, £386,000 per annum. However, if a one off capital sum is paid to cover the Council's share of the pass through costs (assume a settlement figure £3.5m) then there will be a net revenue saving of £40,000 per annum met of borrowing costs, which over the remaining 16 year life of the contract would equate to a saving of £640,000.

15. It should also be noted that if a one off payment was not made to clear the outstanding pass through costs, then to meet the assumed cost of £3.5m, the revenue budget would actually need to increase from £386,000 to approximately £590,000, an increase of £204,000. The payment of a one off lump sum therefore also removes a potential budget pressure of £204,000 per annum, which equates to a further notional saving of £3,264,000 over the remaining 16 life of the contract.

Property

16. None

Other

17. Not Applicable

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

18. The Councils waste disposal functions are carried out in accordance with the Environmental Protection act 1990 and associated secondary legislation. Power to undertake conciliation, as set out in this report, derives from s. 111 Local Government Act 1972 (power to do anything calculated to facilitate, conducive to or necessary for the carrying out of any of the Council’s functions).

Other Legal Implications:

19. None.

POLICY FRAMEWORK IMPLICATIONS

20. The proposals are not contrary to the Councils policy framework.

SUPPORTING DOCUMENTATION

Appendices

(Non-confidential appendices are in the Members’ Rooms and can be accessed on-line)

1.	Summary of Marchwood Energy Recovery Facility (ERF) Conciliators Report on Pass-Through Costs.
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Documents In Members’ Rooms

1.	None
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Background Documents

Title of Background Paper(s)

1.	None	N/A
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Background documents available for inspection at: N/A

FORWARD PLAN No: ET03132 **KEY DECISION** Yes

WARDS/COMMUNITIES AFFECTED:	ALL
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