

Extraordinary Council

Date: **Monday 7 April 2014**

Time: **10:00am**

Venue: **Council Chamber, County Hall, Norwich**

Supplementary Agenda

3. Residual Waste Treatment Contract – Revised Project (Page A2)

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Residual Waste Treatment Contract – Revised Project

Report by the Interim Director of Environment, Transport and Development and Interim Head of Finance

Summary

On 29 October 2013, and following a County Council debate, Cabinet accepted a revised project plan for the residual waste treatment contract relating to the proposed Willows Power and Recycling Centre. The Cabinet report of 29 October stated that:

“If the Plan were accepted and planning was still not secure by Spring 2014 the County Council may have to make a decision to accept that if it wanted the contractor to continue that an increase would have to be made to the cap for the breakage cost, currently maintained at £20.3m, and for the cost of the contract to increase due to the delay, or to terminate the contract.”

At that time a decision to continue the project was made in the knowledge that:

- Safeguards negotiated with the contractor meant that the capped liability of a termination for planning failure remained the same for the County Council; and
- The Communities Secretary had stated that he would decide the planning application on or before 14 January 2014.

However, the Communities Secretary has not made a decision on the planning application. The Council Leader and others have written to him (see Appendix A) stressing the cost of his continuing delay to Norfolk, but he has said only that the delay is due to the ‘time needed to give full consideration to the range of material considerations raised in this case’. He has also been asked to provide a timescale within which a decision might be expected, but he has not done so.

In the light of this continuing delay an urgent and key decision about the future of the contract is now required from Cabinet. Cabinet has the choice of either:

- (a) Continuing to await the Community Secretary’s decision; or
- (b) Terminating the contract.

If the County Council wishes to continue to await the Community Secretary’s decision then the capped compensation for termination for planning failure must increase from £20.3m to around £25m from May 2014. In addition, each month after that, the capped figure would go up by around another £400,000. This would mean that a negative planning decision after May 2014, or a successful challenge to a positive planning decision leading to termination, would incur significantly higher termination costs. Meeting those costs would present the risk of greater implications for services than a decision to reject an increase to the breakage cap now.

In value for money terms, the contract is now estimated to save around £12m over the life of the contract compared to the cost of landfill. This is reducing at the approximate rate of £140,000 per day, because delay is forcing the cost up and also reducing the payback period for savings. This presents the risk that the guaranteed value for money of the contract compared to landfill will reduce to nil before a planning decision is given and the proposal can go ahead. This point will be reached in June 2014.

However, there are additional prospects for improving the value for money over and

above the direct comparison to the cost of landfill. Essentially these relate to two areas:

- Income above guaranteed levels.
- Cost improvements that relate to contract variations.

The first of these might lead to cost improvements equivalent to at least £2m per annum over the life of the contract.

The second might lead to cost improvements equivalent to up to £4m per annum over the life of the contract, but would be subject to extensive negotiations following contract close and therefore cannot be guaranteed.

If the County Council decides to terminate the contract the current overall cost of termination, most recently estimated as £30.26m (which includes the capped element at £20.3m), would become payable. The County Council has currently made contingency financial provision for £19m. The remaining shortfall of circa £11m could be achieved within the necessary timescales, albeit with significant implications for services.

In addition the County Council would lose the potential financial benefits of increasing value for money, as set out above, if the contract was fulfilled.

The County Council would then need to re-procure alternative solutions, e.g. using waste to create a fuel, transferring it to other treatment facilities or landfill, the costs of which will come on top of the £30.26m overall compensation costs.

If the County Council agrees to increase the breakage costs cap, these higher breakage costs would be incurred if the contract is subsequently terminated for planning failure. Termination for planning failure would happen if:

- Planning is unsuccessful because the Secretary of State declines.
- Planning is unsuccessful because an approval is successfully challenged.

The likelihood of planning failure is entirely unpredictable. Even if planning permission is achieved, the continuing delay means that termination for planning failure could still occur under the terms of the contract, if for example funding was not available for the project or the effect of funding terms were outside the affordability ceiling of £631m previously approved by Cabinet in 2011 and were not acceptable to the County Council.

1. **Background**

- 1.1 A request for an Extraordinary Council Meeting on 07 April 2014 was made by Councillors Toby Coke, Richard Bird, Alexandra Kemp, Tim East, Andrew Boswell and John Dobson in order for Full Council to consider:

'a) whether, in view of the delay in the Secretary of State's planning decision in relation to the Willows, it wishes to recommend to Cabinet that the Contract is allowed to terminate to avoid an increase in the compensation figure, currently capped at £20.3m

and

b) whether or not, if planning is granted, it recommends to Cabinet to continue to

implement the revised project.'

This report is provided to help facilitate that debate at this meeting.

- 1.2 In line with the County Council's constitution, where required, any decisions relating to the contract are a matter for Cabinet. The outcome of this meeting will be reported verbally to the Cabinet meeting later on 07 April 2014.

2. **Background to the Project and Current Status**

2.2 **Planning Permission**

The planning application was made on 10 June 2011. The Planning Authority resolved to grant planning permission on 29 June 2012 and the Secretary of State called in that decision for his determination on 30 August 2012 and he put in place an independent Public Inquiry to help him do so.

That Inquiry started on 26 February 2013 and ended on 17 May 2013. The Inspector submitted her report to the Communities Secretary on 30 September 2013 and he advised people of an expected determination on or before 14 January 2014. That timescale has not been met and determination is yet to be given.

We cannot be entirely clear about the reasons for the delay. The Communities Secretary has said only that it is due to the *'time needed to give full consideration to the range of material considerations raised in this case'* and that he would issue his decision when he was in a position to do so. However, whenever he does make his decision, and whatever decision he makes, the process allows six weeks during which a challenge to that decision can be made. In the event a challenge is made, the requisite 'satisfactory planning permission' cannot be said to have been achieved until the challenge is defeated or withdrawn. If a challenge is made the likely period for a hearing to be held could be in excess of a few months but it could be dealt with quicker or take longer.

2.3 **Permit to Operate**

In August 2012 the Environment Agency approved a permit to operate the facility following a series of public consultations. The award of the permit means in the view of the relevant regulator, the facility would operate safely and not pose a threat to human health or the environment.

2.4 **Revised Project Plan**

The Revised Project Plan was accepted by Cabinet on 29 October 2013. At that time a decision to continue the project was made:

- (a) On the basis that the Communities Secretary had stated that he would decide the planning application on or before 14 January 2014; and
- (b) In the knowledge that safeguards negotiated with the contractor meant that the capped liability of a termination for planning failure remained the same for the County Council. This means that, with regards to the capped breakage costs of £20.3m for ending the contract for planning failure, the change in liability to the County Council from October 2013 to now is nil.

3. **The Willows Power and Recycling Centre**

- 3.1 The waste treatment process, technology, location and size of the facility remain unchanged in the revised project. It is an energy from waste facility designed to generate energy from the rubbish that is collected by local authorities in Norfolk left over after waste reduction, re-use and recycling initiatives. The facility would also provide a service to treat waste from businesses, and use it as a fuel by burning it to create steam that would be used to generate electricity.

The process would also recover materials for recycling and use as an aggregate.

Around 22 megawatts of electricity would come out of the facility and it also creates the potential for using the steam as heat to be used locally, which would make it a combined heat and power facility.

The revised project is an improvement on the existing contract as whilst bottom ash will continue to be processed in to metals for recycling and aggregates for construction, Air Pollution Control residues would now be used in a beneficial way rather than disposed of to hazardous waste landfill. The high levels of diversion of waste from landfill, the generation of electricity and the potential to supply heat remain as before.

- 3.2 Works were originally planned to start in the summer of 2012 at the earliest, with a provision for delay until summer 2013. The consequence of delay means that if the process continues, it is unlikely that works could actually start until summer 2014 at the earliest, based on the earliest justifiable time by which unchallengeable planning permission could be expected to be in place. A full service would then start some 34 months after works started. The contract end date remains fixed, being 2040.

4. **Value for Money**

- 4.1 It should be noted that costs quoted in this section are not at today's prices, these are the indexed costs of the contract up to 2040.

The contract is currently estimated to save around £12m over the 23 year operational life of the contract compared to landfill based on the present two month delay to the planning decision expected by the Communities Secretary on 14 January 2014. This assessment is based solely on guaranteed prices in the contract and does not take account of any potential for income above guaranteed levels (e.g. from sale of electricity) or improvement in value for money through contract negotiations.

This figure is £8m lower than the £20m referred to in the report to Cabinet on 29 October 2013 as a consequence of the Communities Secretary's delay in determining the planning application and represents the combined impact of the effects of indexation on capital costs, rises in other costs and the fact that the contract end date is fixed, meaning we now have a shorter time over which to make the payback.

4.2 By comparison, when the contract was signed, it was expected to save Norfolk taxpayers significantly more, around £250m over 25 years, based on two things:

- A contract price that was originally around £582m, (information that has been publicly available on a Treasury database of public infrastructure costs for some time and which excluded potential for improvements to the price from additional income above guaranteed levels). The delay has resulted in an increase in contract price and a continued shortening of the contract payback period.
- A Government grant worth around £169m meaning the cost to Norfolk taxpayers was subsidised. However as we know, the delay caused by the Communities Secretary's decision to call in the planning application meant the first planning longstop date was missed giving Defra the opportunity of reviewing that grant, and subsequently removing it.

The cost to Norfolk was expected to be around £413m at most, compared to the projected cost of landfill over the same period of around £668m, i.e. capable of generating a saving to Norfolk of around £255m.

4.3 The delay and grant removal means that by October 2013 the cost for the revised project had increased to around £610m due to a range of factors, a figure previously referred to as around £600m. Such factors include the need for increased borrowing to allow for the impact of the delay, extending arrangements put in place to mitigate the risk of changes to interest rate and foreign exchange, the effect of indexation on sub-contracts, additional planning, revised project plan and sub-contractor costs and the need to repay debt over a shorter operating period.

Such calculations were made on the assumption the Communities Secretary would make his decision by 14 January 2014 in line with his published timetable. If he had met his timetable, then providing he had given his approval to the application, it would have allowed for works to commence in spring 2014 if no challenge was made.

In value for money terms this would have saved £1.2m in 2016/17 from the reduced cost of commissioning, and around £174,000 in 2017/18 as the full service commenced. Savings over the lifetime of the contract at that time would have equated to more than £20m based on guaranteed prices alone.

4.4 Based on the delay of two months so far, forecast savings have reduced to £0.6m in 2016/17 and £0.5m in 2017/18 as the full service came on line and a total of more than £12m savings over the life of the contract.

4.5 It is important to note that the cost of the residual waste treatment contract reflect a service using the facility that the County Council would own at the end of the contract, i.e. the cost includes both using the facility and buying the facility over the contract period. Under terms of the residual waste treatment contract the County Council would own the asset at the contract end which would be expected to have a substantial operating period remaining of circa 15 years, and would be in control of its treatment processes and all the associated revenues although it is impossible to be certain what alternatives might exist for comparison that far in advance.

The estimated cost of landfill and other available options does not cover the cost to the County Council of using a facility and buying the facility over the contract period, but just reflect the cost of using a facility owned by the operator.

5. **Prospects For Improving Value for Money**

- 5.1 The Government's decision to withdraw the grant support from the project means we are now entirely free to determine value for money on our own terms and not those of Defra and the Treasury in a way we were not before.
- 5.2 There are prospects for improving the contract's value for money. These prospects have been explored through officer negotiations with the contractor to identify the scope and potential for further savings it would be prepared to pursue with the County Council if the contract continued (any such decisions that related to materially significant changes would not be made without further Member approval).

Essentially they relate to two areas:

- Income above guaranteed levels.
- Cost improvements that relate to contract variations.

The first of these might lead to cost improvements equivalent to at least £2m per annum over the life of the contract.

The second might lead to cost improvements equivalent to up to £4m per annum over the life of the contract, but would be subject to extensive negotiations following contract close and therefore cannot be guaranteed.

- 5.3 Income above guaranteed levels creates real prospect for improvement to the price by more than £2m per annum, (and possibly as high as around £4m) relating mainly to shares the County Council would receive from income to the project from electricity sales above guaranteed levels or rearranging debt used to fund the project to improved terms once the facility was up and running, referred to as refinancing. These would be expected to improve the price considerably and the prospects of this occurring are good.

The confidence levels of this generating an improvement equivalent to approximately £2m a year over the contract period are realistically high. This is particularly because additional income from electricity due to higher prices is reasonably expected. However, improvements above this level, i.e. equivalent to up to approximately £4m a year improvements, would in particular require future electricity prices to be considerably higher than they are now and the confidence level on that occurring is lower.

Other potential improvements against guarantees or assumptions in the project could also have a favourable effect on the price.

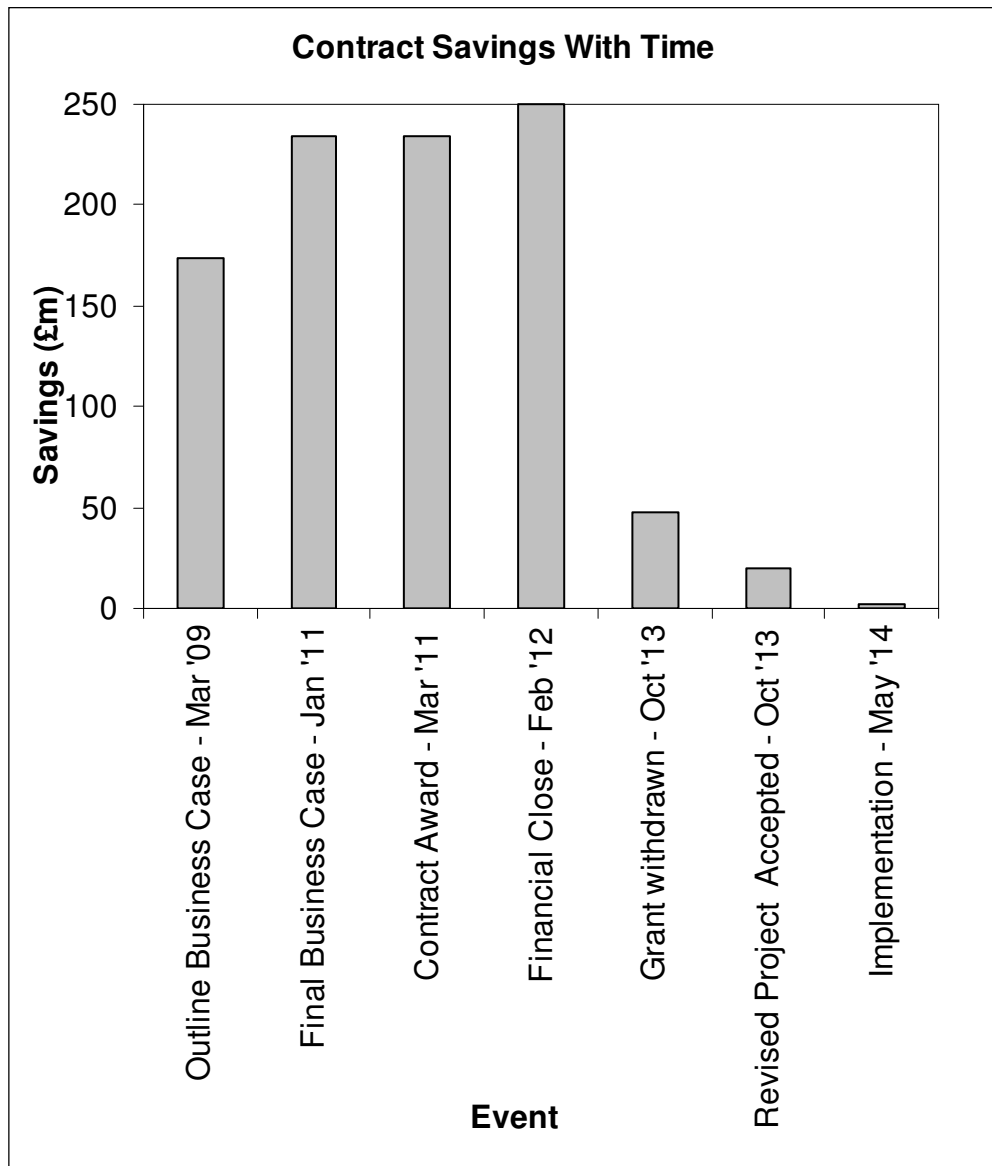
- 5.4 Cost improvements that relate to contract variations create a potential for improving the price equivalent to around a further £4m a year over the contract period. The timing and extent of any such improvements would only be clear following extensive

and detailed negotiations with the contractor, i.e. they are not guaranteed.

One such area is the residual value of the facility. At the end of the contract the value of the facility is owned by the County Council but this position could be changed to deliver significant savings to the County Council over the life of the contract. Other examples of improvements that could occur to the cost could relate to the County Council purchasing energy from the facility or being prepared to make cash injections to the project of the order of £15m or more.

The confidence levels of this generating an improvement equivalent to approximately £3m a year over the contract period are realistically high, in particular because of the real potential around the residual value of the facility. Other potential further improvement equivalent to around £1m a year is viable but may not be as easy to deliver or attractive, for instance the ability for the County Council to make a cash injection in to the project to deliver reductions in the cost.

- 5.5 The figure below presents the reducing savings for Norfolk since the start of the project compared to the cost of landfill. Savings were as high as around £250m at the time of the contract award but have now reduced to £12m due to the delay.



6. Comparison With Other Potential Solutions

6.1.1 Residual Waste

In 2012/13 local authorities in Norfolk dealt with 391,000 tonnes of waste. 170,000 tonnes was reused, recycled or composted and 210,000 tonnes was either sent to landfill or energy from waste through the County Council's waste disposal and treatment contracts, other specialist waste streams of limited volume were also dealt with.

The County Council has ultimate responsibility for dealing with rubbish left over by the Borough, City and District Councils in Norfolk after initiatives for waste reduction, re-use and recycling. It also has a responsibility for left over rubbish from its own Recycling Centres.

In total this residual waste has been around 210,000 tonnes a year for the last three years and actually appearing to increase in 2013/14. This is although overall levels of Local Authority waste, of which residual waste left over is a part, reduced over

much of the last decade. During the last decade the levels of overall recycling saw step improvements which have only been incremental in recent years, with levels of recycling actually reducing in 2013/14 from data received so far for the year.

The amount of residual waste the County Council is responsible for is expected to decrease to around 190,000 to 195,000 tonnes in 2015, as a consequence of an improved recycling service offered to householders in Norfolk expected to start later this year. Changes in households and economic growth have not been factored in to this figure.

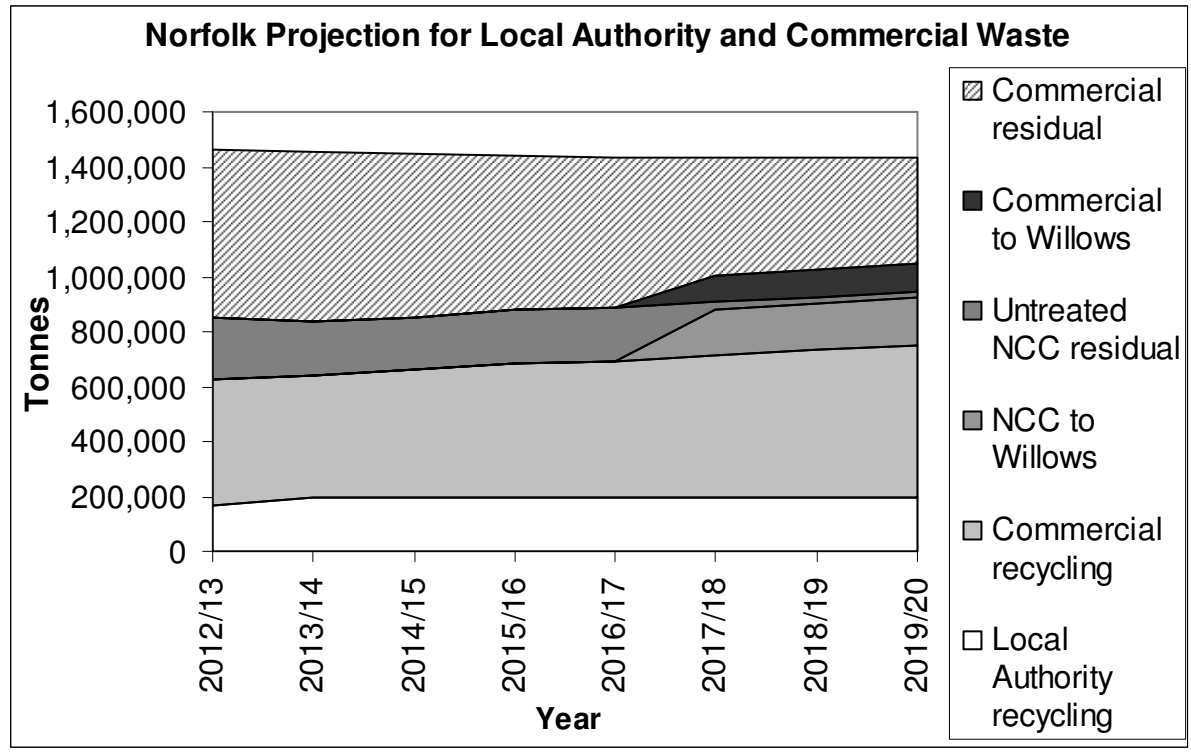
We expect the cost of dealing with this waste next year to be over £20m and around £630m over the 23 year service period covered by the contract projected from the cost of existing arrangements.

6.1.2 Commercial Waste

Norfolk is estimated to generate circa one million tonnes of commercial and industrial waste. It is anticipated that more than half of this will be recycled in the future. However, there will remain a considerable proportion of residual waste that will require treatment or disposal.

6.1.3 Overall picture

Taken together, it can be seen that, after recycling and composting, a significant amount of residual waste needs to be dealt with in Norfolk although the County Council is only responsible for dealing with a part of it. The graph below shows that, whilst the Willows Power and Recycling Centre would divert some waste from landfill, more residual waste needs dealing with.



6.2 We can only be **certain** about the price of differing approaches through competitive

procurement.

As a weighted average across contracts in place in Norfolk, the cost per tonne in 2014/15 is around £115 including transport costs. In reality, there has not been much difference between the cost per tonne of contracts for landfill in Norfolk and cost for treatment elsewhere. This is because though treatment solutions elsewhere may be cheaper than landfill locally, the cost of transport to the place of disposal or treatment either makes them more expensive or makes the costs similar.

Also, those with capacity want to maximise their returns, so it is quite common for the cost of treatment based solutions, or those designed to use waste to generate a fuel, to track the cost of landfill.

However, from the County Council's regular tracking of general market developments and trends it is clear there are options for short to medium term contracts, i.e. up to around five years in length, that may be deliverable and considerably cheaper than landfill, with costs in total that could be less than or around £100 per tonne when the total cost of disposal or treatment and transport is combined.

- 6.3 The independent report by PWC, completed for the County Council at Member request in December 2013, was clear about the difficulty of comparing short term and long term arrangements. It recognised that the value for money of any alternative would have to include payment of the termination costs for the residual waste treatment contract (latest estimate of overall costs of around £30.26m for termination for planning failure implemented by 01 May 2014) and a clear recognition that alternatives did not lead to the County Council owning a facility at the end of the contract.

In line with the PWC advice, the table below sets out for comparison costs of potential alternative solutions with the costs of termination for the current contract built in to the price estimates.

The price estimates below are based on insights from other authorities about their contracts and the outcome of procurement activities. They also reflect insights from the market relating to deliverable solutions.

Note that this table only compares cost, it does not take into account other factors such as carbon and environmental benefits, local job creation and delivery of local infrastructure and links to economic development that would be a part of the criteria of a detailed evaluation comparing potential solutions along with price.

Length of Contract	Type	Comments	Total Cost
Up to 5 years, i.e. short to medium	Disposal, treatment or fuel generation.	<ul style="list-style-type: none"> • Lower certainty for shorter contracts • Large tonnage short contracts may not be as deliverable • Multiple contracts may be required creating volatility around replacements • Treatment and fuel based solutions likely to involve higher transport costs • Fuel based solutions involve preparation cost • Available capacity in UK for treatment or use as a fuel and western Europe for fuel use only • Upside share potential unlikely • No asset ownership by County Council 	£135 to £145 per tonne. This range is generated by the cost of termination added on to the costs of service and transport out of Norfolk estimated at £100 to £110 per tonne and possibly lower
10 years or more, i.e. long	Disposal, treatment or fuel generation	<ul style="list-style-type: none"> • Increased certainty of longer contract • Larger tonnage contracts may be more deliverable • Multiple contracts may be required creating volatility around replacements • Local infrastructure may be developed • Treatment and fuel based solutions likely to involve higher transport costs • Fuel based solutions involve preparation cost • Available capacity in UK for treatment or use as a fuel and western Europe for fuel use only • Upside share potential more likely • Asset ownership by County Council unlikely. 	£107 to £117 per tonne. This range is generated by the cost of termination added on to the costs of service and transport out of Norfolk of £90 to £100 per tonne and possibly lower
Willows Power and Recycling Centre (Residual Waste Treatment Contract)	Treatment	<ul style="list-style-type: none"> • Higher certainty from length and size of contract • Price guaranteed and expected to improve due to income benefits and ability to renegotiate contract • In county solution • County Council owns asset at end of contract with benefit of residual value and full benefit of any income • Long term security 	Originally £65 per tonne before the delay and with the benefit of a grant and now £105 to £110 per tonne based on guarantees and possibly lower than £95 per tonne with no cost of termination

7. The Decision Relating to Breakage Cost

7.1.1 When the contract was awarded the project was expected to start in 2015. The delayed planning decision means the contractor has had to make arrangements to accommodate it. For example, it has had to ensure continuing access to the required level of funds for the project (the capital costs are now around £167m). It has also had to extend arrangements put in place to mitigate the effects of foreign exchange and interest rate changes, and ensure suitable arrangements exist for specialist sub-contractors.

7.1.2 The delay means the contractor is not receiving any payment from the County Council to help meet these additional costs. It is fully aware that because the existing cap is in place a termination before 01 May 2014 would mean not all of them could be recovered, incurring for the contractor substantial additional costs which have been increasing by around £400,000 each month since summer 2013 (mainly due to bank fees, interest, letter of credit costs and running costs).

It is for these reasons, and to mitigate any potential further losses, that the contractor now requires the capped compensation figure to be increased if the County Council wants the contract to continue. This would give the contractor an assurance it would be compensated for some, but not necessarily all, of its costs should the contract be terminated later.

7.1.3 The breakage cost figure is a genuine cap, it is not a guaranteed payment and any compensation payable would be the auditable and evidenced costs relating to certain things covered in the contract, for example bank costs, subject to the relevant cap.

7.2 **The Choices for Cabinet Relating to Breakage Cost**

7.2.1 **Agreeing to Increase the Breakage Cost**

If the County Council agrees to increase the capped figure it will have to pay more if the contract is subsequently terminated for failure to secure a satisfactory planning permission. For example the figure steps up from £20.3m to around £25m in May 2014 and would increase by some £400,000 for each month thereafter, matching the actual cost of delay to the contractor. This escalator extends until two months after the planning longstop date in December 2014 into early 2015 to allow for the project to be implemented if planning permission was secured on that date but for whatever reason the revised project could not then be implemented.

7.2.2 The longstop date for planning is December 2014. Satisfactory planning decision means a planning decision has been made and is no longer at risk of challenge. A period of six weeks after a decision by the Secretary of State has to pass before it is deemed that satisfactory planning permission has been obtained to give people time in which to lodge any challenge.

If by December 2014 the Communities Secretary still hasn't decided the application or, he has decided it but the six weeks challenge period hasn't been concluded or has resulted in a challenge, then satisfactory planning permission will not have been obtained. At that point, the contract could be terminated on that basis or before then if all parties agreed it was not reasonable to expect to secure satisfactory planning permission by the longstop date.

7.2.3 If, however, the necessary permission is obtained, the price is then updated to reflect the new dates, for instance sub-contractor prices would be updated in line with indices. The County Council would only need to make a new decision at that time if the cost increased to such an extent that it fell outside the affordability approval made by Cabinet on 07 March 2011, i.e. less than £631m. A new decision could include rejection.

If that were to happen, then contractually, it would result in termination as if for planning failure. This would also apply should, for example, the revised project fail because funders withdrew from the project (and the funding gap could not be filled) or the contractor was unable to get the approvals it required. In both cases the breakage would be in line with the escalator as described above.

7.3 **Not Agreeing to Increase the Breakage Costs**

7.3.1 If the County Council does **not** agree to increase the £20.3m capped compensation, the contract would terminate 15 business days after a termination notice was served or 15 days after 01 May 2014 if no notice is served. This would incur a cost to the County Council estimated in March 2014 as around £30.26m. This figure comprises:

- (i) The prospect of meeting a share of the contractor's costs up to £20.3m which is a figure approved by the Government and agreed in the contract.
- (ii) The prospect of meeting around 90% of the contractor's public inquiry costs which are currently estimated at around £1.6m.
- (iii) The cost or income generated from the banks cancelling arrangements put in place to mitigate the risk of changes in foreign exchange and interest rates. The cancellation by the banks occurs as a direct consequence of the contract terminating, i.e. a termination would trigger this, and the amount would be dependent on the prevailing financial conditions at the time they were cancelled. Based on the recent markets in March 2014 this was calculated to generate an estimated cost of some £8.36m, previously calculated as around £4.4m in September 2013 and more than £12.9m in April 2013 when market conditions were different. The costs would only be confirmed on cancellation.

It should be noted that this total cost, recently estimated as around £30.26m, is expected to be higher for any decision to terminate for planning failure implemented after 01 May 2014 as the fixed element of the cost, i.e. the £20.3m, would have increased as explained above in Section 7.2.1 to around £25m in May 2014 and which would increase by some £400,000 for each month thereafter.

7.3.2 **Timescales for Paying the Costs**

The estimated £8.36m cost of ending arrangements put in place to mitigate the risk of changes to foreign exchange rates and interest rates, would be payable within three business days of these costs being incurred by the banks.

The capped compensation cost of £20.3m and other costs relating to the public inquiry would be payable within 40 business days of the termination date.

7.3.3 The breakage costs payable on planning failure have been extensively scrutinised by Members and were also approved by Defra when the competitive dialogue process was closed, its commercial team being satisfied all positions were in line

with market positions for deals recently closed or in the final stages of closing and met Treasury requirements. They have also been the subject of a fully independent review by a Queen's Counsel and independent financial advisor.

8. The Decision Relating to Implementing the Revised Project

- 8.1.1 A decision to continue to implement the revised project must be notified by the County Council to the contractor ten business days before the break option date of 01 May 2014. The implementation would involve the County Council approving revised financial agreements and other financial instruments once satisfactory planning permission was obtained, at which point the County Council would enter in to a deed of variation to incorporate and reflect the new dates and the cost, as well as any necessary consequential changes (e.g. to sub-contracts) provided these were in line with the revised project accepted on 29 October 2013.

The price would then be updated to reflect the new dates, for instance sub-contractor prices would be updated in line with indices. The County Council would only need to make a new decision at that time if the costs increased to such an extent that they fell outside this report, i.e. the variation was outside the affordability approval made by Cabinet on 07 March 2011, i.e. less than £631m, meaning the County Council would need to make a new decision which could include rejection, which would result in termination as if for planning failure and be subject to the escalated cap.

- 8.1.2 It is also possible that the revised project could fail because, for example, funders withdrew from the project and could not be replaced or the contractor was unable to get approvals it required. Again termination in this scenario would be as if for planning failure and subject to the escalated cap.

- 8.1.3 There is a three month only option, i.e. not ongoing, provided for in the agreement, to address any challenge to a decision to implement the revised project. This option gives the County Council the right to terminate in the three months after 01 May 2014 if it agrees to make payments for termination in that three month period in line with the cap escalator. This provision allows the contract to continue beyond 01 May 2014 up to 31 July 2014 (i.e. to avoid automatic termination on such date together with associated costs) where the contractor agrees, and where there is not approval for the full escalator cap but there is approval to underwrite the costs of the escalator cap only for the three months. This option is also covered in Section 13.5 of this report.

8.2 Contract Implications of Not Agreeing to Implement the Revised Project Now

If the County Council does not agree to implement the revised project the contract will end as for termination for planning failure, with compensation payable at the current, capped figure of £20.3m and other associated costs in total currently estimated at £30.26m assuming the termination takes effect prior to 01 May 2014.

The contract would terminate 15 business days after the County Council gives notification to this effect; see Section 7.3.1 above.

9. What About Further Delay and Costs?

- 9.1 Further delay could occur if, for example, the Communities Secretary's planning decision is challenged in the courts.
- 9.2 The end date of the contract remains fixed, and each day's delay shortens the period over which payback and value for money is calculated. In addition, other costs that affect the price of the contract, such as the effect of indexation on sub-contractor prices are rising. This means that in value for money terms, the contract is now estimated to save around £12m compared to the cost of landfill. This will continue to reduce at the approximate rate of £140,000 per day.

The cost of the contract, which is a part of the value for money calculation, is increasing because of factors such as the need for increased borrowing to allow for the impact of the delay and extending arrangements put in place to mitigate the risk of changes to interest rate and foreign exchange. Also, because of the effect of indexation on sub-contracts, additional planning, revised project plan and sub-contractor costs and the need to repay debt over a shorter operating period. Another part of the value for money calculation is the comparison with the costs of landfill over a decreasing period to 2040. It is a combination of the increasing cost and the shortening period of comparison with landfill that is together causing the project's value for money to diminish.

- 9.3 Had the Communities Secretary made his decision and approved the project, as expected, by 14 January 2014, then based on guarantees provided by the contractor the County Council could have expected a minimum estimated £20m savings compared to the cost of landfill. The delay has reduced this to around £12m. Were the decision to be delayed as late as June 2014, the cost saving compared to landfill disappears. However, the reduction would have to continue much further to offset both the cost of termination and compensate for the potential for unguaranteed income or contract variations to improve the contract cost.

This is because that assessment, based solely on a straight comparison to the costs of landfill, excludes other key considerations affecting value for money which need to be taken into account: They include:

- The currently estimated £30.26m overall cost of termination, which would be higher if termination for planning failure occurred later in 2014 (i.e. after 01 May 2014).
- The cost of procurement, this contract has so far cost the County Council around £3.5m in procurement costs (not including the purchase of the site) but any future 'non-PFI type' procurement would cost much less, possibly less than £50,000.
- The competitiveness of any procurement due to effects of termination on market confidence.
- The future use of the County Council owned site at the Willows Business Park.
- The significant potential for non-guaranteed upside share estimated as equivalent to approximately at least £2m a year over the life of the contract.
- The significant potential for savings from contract negotiations estimated as equivalent to up to £4m a year over the life of the contract.

The assumptions here are for 170,000 tonnes of waste, i.e. in line with the terms of the contract, compared to landfill costs up to 2040 when the contract expires, and that the future costs of landfill and landfill tax are indexed by 2.5% each year.

10. **Conclusion**

10.1 The Secretary of State continues to delay his decision indefinitely on planning permission. The financial impact of this continuing delay is considerable. There are two separate consequences:

- (i) We are now approaching the deadline for the expiry of the current, capped and fixed costs of termination on the grounds of planning failure, currently capped at £20.3m, a figure that excludes other costs that arise from termination covered in the report. The contractor advises it will want this cap to be revisited and increased to reflect the very considerable financial impact on the consortium of delay. Its proposal is that this would increase from £20.3m to around £25m from May 2014. In addition, each month after that, the figure would go up by around another £400,000, payable were the contract to end later in 2014 as a result of termination for failure to secure planning permission up to the agreed planning longstop date in December 2014, or in early 2015 if planning was secured on that date but for whatever reason the revised project could not then be implemented.
- (ii) The end date of the contract remains fixed, and each day's delay shortens the period over which payback and value for money is calculated. In addition, other costs that affect the price of the contract, such as the effect of indexation on sub-contractor prices are rising. This means that in value for money terms, the contract is now estimated to save around £12m compared to the cost of landfill. This will continue to reduce at the approximate rate of £140,000 per day. However, there are additional prospects for improving the value for money over and above the direct comparison to the cost of landfill as set out in Sections 5.1 to 5.4 of this report.

10.2 These scenarios present the following risks:

- (i) The timescale for a planning decision is now completely uncertain and unpredictable. This presents the risk that the value for money of the contract compared to landfill will reduce to nil before a planning decision is given. This point will be reached in June 2014. There is the prospect of potentially significant additional value for money benefits equivalent to between £2m and £8m a year over the contract period, but these are not guaranteed. In any case they would need to be set against potential continuing delay in a planning decision beyond June 2014, and associated costs.
- (ii) The County Council has currently made financial provision for £19m of the current overall cost of termination most recently estimated as £30.26m which includes the capped element at £20.3m. The remaining shortfall of circa £11m could be achieved within the necessary timescales, albeit with significant implications for services.

(iii) A negative planning decision after May 2014, or a successful challenge to a positive planning decision, would incur higher termination costs as the capped element fixed at £20.3m would increase to around £25m from 01 May 2014, rising by some £400,000 per month thereafter. This means the overall costs of termination, currently estimated at £30.26m would increase accordingly, i.e. to around £35m rising by some £400,000 per month thereafter. Meeting those costs would present the risk of greater implications for services than a decision to reject an increase to the breakage cap now.

10.3 There are a number of variables to be considered which makes the decision to be made a complex one:

- The key factor is that there is no certainty at all on the timing of a planning decision and no prospect of gaining certainty in the foreseeable future.
- However, even when a planning decision is made, there is the possibility of an appeal (i.e. even a positive planning decision could be appealed). If this were the case, then the breakage costs would increase significantly if termination were to take place after 01 May 2014.
- Value for money is decreasing on a daily basis.
- Whilst there are additional benefits that could affect value for money, they are not guaranteed.

In addition to the above, the project also faces risks on a number of other fronts. For instance, there is the risk of funding being withdrawn, which could lead to termination for planning failure (with increased breakage costs if this occurred after 01 May 2014).

There is also the possibility that planning permission could be refused within a few weeks. Alternatively, planning permission could be delayed for some months and then refused. In both scenarios, the contract would terminate for planning failure but the County Council would incur higher breakage costs than at present.

It is also possible that planning permission could be delayed for some months and eventually granted, by which time value for money benefits will have significantly reduced. Furthermore, other factors could have in the meantime caused the contract to fail, again with the County Council incurring the higher breakage costs.

Or planning permission could be delayed indefinitely with consequences which are impossible to calculate.

10.4 This means that an urgent and key decision about the future of the contract is now required from Cabinet. The two main decisions and the financial consequences are summarised in the table below.

Decision	Yes - consequence	No - consequence
1. Agree whether or not to increase the breakage cost cap from £20.3m to circa £25m in May 2014	Cost effect either: <ul style="list-style-type: none"> • £0m if the contract continues • if contract ends for 	Contract would automatically end because the cap had not been increased, impact

plus some £400,000 per month if termination occurs later in 2014 or in early 2015	planning failure later the cost is circa £25m in May 2014 plus some £0.4m per month thereafter, in addition to the £1.6m inquiry cost and £8.36m recent cost estimate for ending hedging arrangements	£30.26m cost estimate (i.e. £20.3m in addition to £1.6m inquiry cost and £8.36m recent cost estimate for ending hedging arrangements)
2. Agree whether or not to implement the revised project (on the basis set out in this report)	<p>Cost effect either:</p> <ul style="list-style-type: none"> • £0m now and cost of the project if planning is successful and the contract continues • Value for money of contract reducing for each days delay by around £140,000 • if contract ends for planning failure later the cost is circa £25m in May 2014 plus £0.4m per month thereafter, in addition to £1.6m inquiry cost and £8.36m recent cost estimate for ending hedging arrangements • assumes a decision to increase the breakage cap is agreed – if not this is irrelevant) 	If not agreed the contract terminates in 15 days, impact £30.26m cost estimate (i.e. £20.3m in addition to £1.6m inquiry cost and £8.36m recent cost estimate for ending hedging arrangements)

10.5 Firstly, Cabinet needs to decide if it wants to accept or reject such an increase to the breakage cap. The consequences of each option are as follows.

If Cabinet decides to **reject** such an increase, the contract will end automatically in line with the provisions of the agreement with the contractor. This will result in compensation payable on the same grounds as for termination for planning failure, the total costs of which were estimated in March 2014 as up to £30.26m for termination for planning failure implemented by 01 May 2014. This sum is made up as follows:

- The compensation figure capped at £20.3m.
- The County Council's share of the planning inquiry costs, currently around £1.6m.
- The cost or income relating to the ending of arrangements put in place to mitigate the risk of long term changes in interest or foreign exchange rates, estimated in March 2014 as some £8.36m.

- 10.6 If Cabinet decides to **agree** an increase, there would be an initial increase in the breakage cap escalator from the current £20.3m to around £25m in May 2014. Each month after that, the compensation payable should the contract end later in 2014 for termination for failure to secure planning permission up to the agreed planning longstop date in December 2014 would increase by some £400,000 a month and in to early 2015 if planning was secured on that date but for whatever reason the revised project could not then be implemented.

Secondly, Cabinet also has to decide whether or not to agree to implement the revised project as accepted in October 2013 if a satisfactory planning permission is obtained. Implementation involves concluding all the necessary amendments to the financing documents to reflect the final contractual timetable and funding requirements based on that timetable and completing a deed of variation to the contract to reflect the changes. The cost is established after the final details are complete, and accordingly it is recommended that any decision to implement the revised project is subject to a delegation to the Director to agree the final details provided that the revised agreements reflect the revised project as accepted on 29 October 2013 and remains affordable in line with the affordability approval made by Cabinet on 07 March 2011, i.e. less than £631m.

- 10.7 If Cabinet decides **not to implement** it, the contract can end by the County Council giving 15 working days notice. The compensation payable is the estimated £30.26m as set out above.

The County Council will then need to re-procure alternative solutions, e.g. using waste to create a fuel, transferring it to other treatment facilities or landfill, the costs of which will come on top of the £30.26m compensation costs.

- 10.8 If Cabinet decides that the revised project **should be implemented**, the contract continues. If planning is unsuccessful or another party (e.g. the banks) stops the revised project being implemented, at that point, the County Council would be liable to compensation at the higher rate in line with the breakage cap escalator.

10.9 **Wider Budget Implications**

In February this year the County Council agreed its 2014/15 budget. This includes a contingency sum of £19m towards the cost of termination for planning failure. If we are required to pay the termination costs within the timetable set, we would need to take the balancing sum, some £11.26m based on estimates in March 2014, from general reserves in the short term. Doing so would bring the level of those reserves below the minimum level of £19m set by the County Council, so the County Council would need to take swift action to find further savings in this financial year to replenish them.

The project faces a number of risks as outlined in this report, the most immediate one being a failure to obtain a satisfactory planning decision from the Communities Secretary (either before 01 May 2014 or thereafter). Even if a satisfactory planning decision is received, there remain further and serious risks to the project (including the possibility of that decision being challenged) which will materially affect the project's ability to proceed. Each of the risks to the project could result in the

breakage costs increasing and every delay to the project represents diminishing value for money. The risks and their financial consequences have been carefully assessed by officers and, for the reasons set out in this report, it is recommended that the County Council should minimise the potential financial impact of these risks materialising by not agreeing the increased breakage costs.

11. **Resource Implications – Finance**

11.1 Contract termination on the grounds of failure to secure satisfactory planning permission, not to increase the breakage cap or through a decision not to implement the plan would, as explained previously, result in costs to the County Council currently estimated at £30.26m in total. This would lead to:

- Providing 15 days notice that the County Council wishes to terminate the contract, then;
- After termination a figure recently estimated as £8.36m payable within three days of costs being notified by the banks, then;
- £20.3m, plus a share of the planning inquiry costs estimated at around £1.6m, payable within 40 business days of the termination date (i.e. early July 2014).

On top of these liabilities the County Council would need to factor in additional costs to procure new arrangements.

It should be noted that this cost recently estimated as around £30.26m is expected to be higher for any decision to terminate for planning failure implemented after 01 May 2014 as the fixed element of the cost, i.e. the £20.3m, would have increased as explained above in Section 7.2.1 to around £25m in May 2014 which would increase by some £400,000 for each month thereafter.

11.2 **The Impact on the County Council Finances of Termination Now**

11.2.1 The current cost of the contract, value for money aspects and the potential to increase them further are covered above.

This section deals with the financial implications for the County Council of any decision that would result in the termination of the contract for planning failure at this point in time.

11.2.2 Recommendation 7, in the 2014/15 Revenue Budget report agreed by Cabinet and Council stated:

'....a delay in the Willows decision...., exposes the Council to a potential increase in termination costs.... resulting in an unfunded risk of £12m...., which in the short term would be covered by the General Reserve, whilst urgent savings were then assembled to restore the General Reserve to its £19m minimum.'

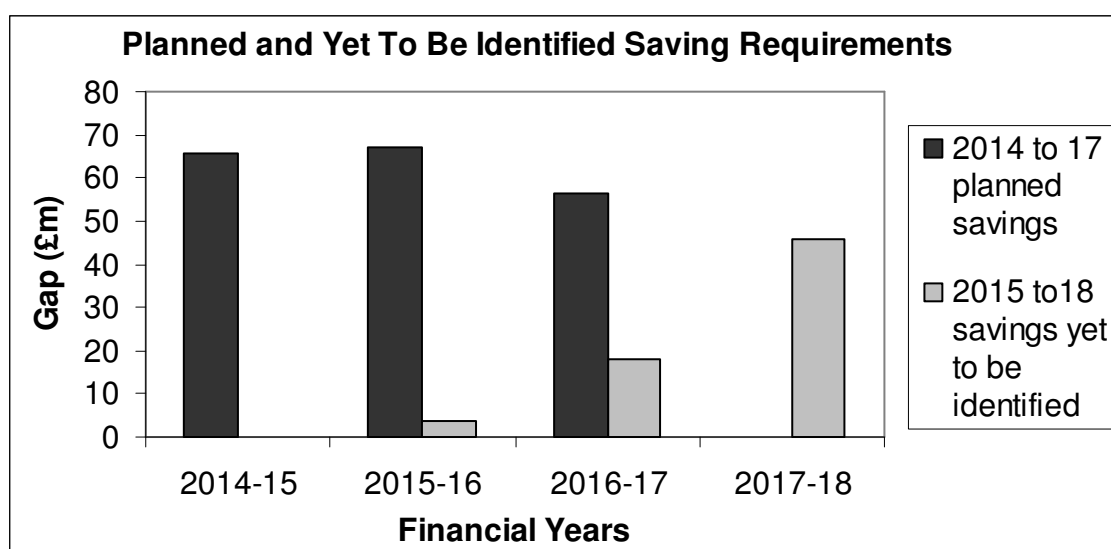
11.2.3 The reason for quickly rebuilding the General Reserve back to its policy level of £19m, from the lowest level recently, is to cover the genuine risks of large change. For example, the Inspection of the Children's Service could require more effort and cost. The Willows termination costs are not a 'normal risk' the General Reserves were designed to cover.

11.2.4 Recommendations 1 and 2 in the Adequacy of Provisions & Reserves report agreed by Cabinet and Full Council stated:

'Note.... the reduction in non-schools earmarked and general reserves of just under 65% from £112m (March 2013) to £39.6m (March 2017). Agree.... for 2014-15 a minimum level of General Balances of £19m, and forecast minimum levels.... of £22.4m (2015-16) and £24.1m (2016-17).... reflecting the transfer of risk from Central to Local Government.'

(e.g. health funding, business rate appeals etc). It is the case that the County Council is relying more on the adequacy of its Reserves, since departmental contingencies, which have contributed to the past budget solutions, no longer exist.

11.2.5 Together with a reducing level of reserves, there is an unrelenting pressure to deliver (and identify) new savings over the next four years, as illustrated below.



11.2.6 If the residual waste treatment contract is terminated on the grounds of planning failure, a sum recently calculated as around £30.26m will become payable on the basis set out in Section 7. An earmarked reserve of £19m, plus a £3m 2013/14 under spend, leaves just over £8m to be funded. Temporarily, the General Reserves will provide, but as part of the decision, a plan for restoring the General Reserves should be agreed.

11.2.7 Cabinet needs to identify £8m of funds immediately, to restore the General Reserves; this is the safest financial route for the County Council, given the financial risks noted above. The areas from which the funding would come could be subject to revision later, if further savings emerge.

11.2.8 The identification of the funding sources will be wide ranging and can include new savings opportunities, such as DNA (Digital Norfolk Ambition). Included in the information to the Cabinet will be the risks attached to stopping expenditure, so that the choices can be prioritised. This work will take a few weeks to complete, but in time to report to the 12 May 2014 Cabinet.

In the longer term the cost of the termination could be partially ameliorated by the sale of the site which was purchased in 2008 for around £1.769m.

There is the possibility, raised by local MPs, that in the event of a termination the Government would look favourably on assisting the County Council with the termination cost. However, subsequent enquiries by the Leader of the Council have failed to find any evidence that this would be the case.

11.3 **The Impact on the County Council Finances of a Later Termination**

11.3.1 A decision later in the year to terminate the contract, or circumstances leading to the contract termination under provisions for failure to secure satisfactory planning permission, would incur costs at a higher level as set out in Section 7 because the currently capped costs will have risen. The most likely scenario in which such a scenario would arise is because of a response to external events, e.g. significant delay caused by a planning decision challenge, rather than as a consequence of the County Council's actions alone.

12. **Risk Implications / Assessment**

12.1 If the contract continues and the Secretary of State refuses planning permission and the contractor does not challenge this, the County Council will have the right to terminate for failure to secure satisfactory planning permission.

This is if no allowance was made for further delay, for example by development of another revised plan, and it was not expected that the contractor would be able to secure satisfactory planning permission by the longstop date of December 2014. In this scenario the County Council would have to make payments for termination for failure to secure planning at the increased level, i.e. the elements of the overall costs currently capped at £20.3m would be higher in line with the monthly escalator which increase to around £25m in May 2014 and by some £400,000 per month thereafter.

As a consequence the overall cost could be expected to be higher than the recently estimated £30.26m cost of termination for termination for planning failure implemented before 01 May 2014 simply because the capped element of this cost is would be higher than the current capped figure of £20.3m.

12.2 The price is updated to reflect the new dates after satisfactory planning is secured, for instance sub-contractor prices would be updated in line with indices.

If a planning decision is not challenged during the six week challenge period then parties would then proceed to implement the plan and finalise all the required documentation quickly to secure revised funding agreements and to adjust the arrangements put in place to mitigate the risk of interest rate and currency movements taken out in February 2012 (note that the current anticipated cost of doing this is included, however it should be emphasised that these costs can be volatile and subject to change). As a result, and similar to the situation in February 2012, the total cost would not be known until the day this process is completed.

This would lock in all the required funding for the project and once that is achieved the contractor would issue to the construction sub-contractor a notice to commence the works.

If the parameters for such variation were outside those agreed by Cabinet in March 2011, or were deemed unacceptable for any reason, a new decision would be required, and this could include rejection which would lead to payment of termination costs.

- 12.3 It is also possible that even with satisfactory planning permission the project could fail in the implementation stage due to other parties, for instance if funders withdrew from the project (and were not replaced) or the contractor was unable to get the approvals it required to progress, and in such a scenario termination on provisions equivalent to planning failure would follow at the increased level, i.e. the £20.3m cap would be higher and as a consequence the overall cost could be expected to be higher than the recently estimated £30.26m cost of termination in line with the escalator explained in Section 7.2.1.
- 12.4 If the County Council made decisions that led to termination in an incorrect manner, or for the wrong reasons at the wrong times it could lead to a termination equivalent to voluntary termination and not termination on grounds of planning failure. This could expose the County Council to risk of significantly higher costs than those estimated for termination under provisions for failure to secure satisfactory planning permission. This is a cost potentially in excess of £100m, as identified in the independent report undertaken for the County Council by PWC and under provisions in the contract reviewed by Queen's Counsel and previously approved by Defra and Treasury.
- 12.5 If the planning permission is granted by the Secretary of State it is possible that this would be subject to a challenge and could lead to extensive delay. The Challenge Period will expire six weeks after the date of the Secretary of State's decision on planning. If this leads to the prospect of no satisfactory planning permission being in place by the planning longstop date in December 2014 this could lead to termination for planning failure at the increased level, i.e. the £20.3m cap would be higher and as a consequence the overall cost could be expected to be higher than the recently estimated £30.26m cost of termination in line with the escalator explained in Section 7.2.1. This could be avoided with a further revised project plan, but the contractor is not obliged to provide such a plan and it would need further approvals from the contractor, the County Council and the funders.

If this led to a delay in implementing the project beyond summer 2014 this would mean an inflationary increase in the price is required, for instance sub-contractor prices would be updated in line with indices. For the avoidance of doubt the County Council would bear the full impact, via higher contract cost, of a delay.

- 12.6 Any decision made by the County Council could be challenged by another party.
- 12.7 For the sake of completeness (but not relevant to the decision required now) it is possible that planning permission could be granted after the contract was terminated (if the applicant did not withdraw its planning application), in these

circumstances the County Council would own a site with planning permission which would lead to decisions being required as to the future use of the site.

13. **Alternative Options**

- 13.1 To not allow the contract to continue and to terminate for failure to secure planning permission the following decision would be required by Cabinet:
1. To resolve not to replace the existing cap on breakage costs for planning failure with the escalator cap and to allow the Contract to terminate for planning failure on 01 May 2014 and to serve a notice pursuant to clause 3.8.2 of the Deed of Variation dated 29 October 2013 stating that the County Council wishes to terminate on the basis there is no prospect of financial close prior to the 31 July 2014.
 2. To delegate to the Director of Environment, Transport and Development, or in the absence of the Director the Assistant Director with the responsibility for the waste service, the approval of any necessary associated documents together with any additional acts and instruments required to give effect to this decision.
 3. To note that the termination cost will be funded from the provision in the budget and using the general reserve and to put in place arrangements to identify funding sources to bring the general reserve up to the minimum level agreed by the County Council and that the identification of funding sources, to restore the general reserve will be reported to Cabinet on 12 May 2014.
- 13.2 To allow the contract to continue the following decisions would be required by Cabinet:
1. To agree that from 01 May 2014 the existing £20.3m cap shall be replaced with the escalator cap as provided for in the Deed of Variation dated 29 October 2013.
 2. To agree that, if satisfactory planning permission is obtained before the planning longstop date in December 2014, the revised project plan is implemented notwithstanding the removal of the Waste Infrastructure Grant and provided that the project remains affordable in line with the affordability approval made by Cabinet on 07 March 2011.
 3. To delegate to the Director of Environment, Transport and Development, or in the absence of the Director the Assistant Director with the responsibility for the waste service, the approval of revised financing agreements provided that the revised financing agreements result in a project that remains affordable in line with the affordability approval made by Cabinet on 07 March 2011.
 4. To delegate to the Director of Environment, Transport and Development, or in the absence of the Director the Assistant Director with the responsibility for the waste service, the agreement of any deed of variation required to reflect the revised project (provided that any deed of variation does not materially alter the contract other than as necessary to reflect the revised project plan accepted on 29 October 2013 and the revised financing agreements).
 5. To delegate to the Director of Environment, Transport and Development, or in the absence of the Director the Assistant Director with the responsibility for the waste service, the approval of any necessary associated documents together

with any additional acts and instruments required to give effect to the revised project including, without limitation, direct agreements with funders.

6. Authorise the provision of an indemnity to the Practice Director of nplaw and Head of Finance or another appropriate officer who will sign any Local Government (Contracts) Act 1997 certificates as to the County Council's vires to implement the revised project.
7. To make provision in the County Council's Financial Plan for the funding of the revised project and the resources required to manage the contract.

- 13.3 The increase to the breakage costs can either be allowed for or not. If an increase is not accepted the contract will terminate, if it is accepted the contract will continue unless terminated on other grounds.

The implementation of the revised plan can either be agreed or not. If this is not accepted the contract will be terminated, if it is accepted the contract continues.

- 13.4 It is theoretically possible to make one decision without the other. However in practice it would make little sense to do so. If the County Council was to agree to implement the project, but not to increase the breakage cap, the contract would terminate anyway because the implementation could not now happen prior to the 01 May 2014 at which point the contract terminates automatically if the increased breakage had not been agreed.

Conversely, it would be not make sense to agree to increase the breakage cap and simultaneously decide not to implement the project. That would simply expose the County Council to greater breakages costs for no reason.

- 13.5 The decisions could be decoupled and a decision on implementation made later. However, this has significant disadvantages:

- It means that one of the factors which would lead to a termination (and therefore the realisation of the breakage costs) would not have been settled. The County Council would be agreeing the breakage cap increase without having decided whether it would implement the project anyway, rendering the decision more risky.
- The County Council would potentially not be able to meet the contractual deadlines for reaching a decision to implement if planning is obtained.
- A decision not to implement gives the County Council the ability to trigger termination prior to automatic termination.

- 13.6 The County Council could decide just to approve the cap escalator for a three month period from 01 May 2014 to 31 July 2014, i.e. allowing an increase to the capped cost of termination from £20.3m by £4.5m in May 2014, followed by some £400,000 in each of the next two months. This is an alternative to deciding to approve the full cap escalator, i.e. up to the longstop date in December 2014 and in to early 2015.

On its face, this may seem an attractive option, as it is an alternative to the contract terminating in May 2014 and it limits the County Council's exposure to the impact of termination.

However, in order to implement this option, the Contractor's agreement would be required and the County Council would be obliged to continue to try and seek approval for the full cap escalator, i.e. up to the longstop date in December 2014.

This approach also has significant disadvantages. Firstly, the majority of the increased cap would be incurred in May to June 2014 anyway. The increase month on month beyond July is some £400,000 a month. Should the County Council agree to increase the cap only until 31 July 2014, then it would need to achieve satisfactory planning and implement the revised project by 31 July 2014. In light of the continuing delays from the Communities Secretary in making a planning decision, the likelihood of this being achieved is considered low.

Furthermore the County Council has the right to decide not to implement the revised project at a later date and if other parties cause a delay in implementing the revised project after satisfactory planning permission is secured then the contract can also terminate.

14. Reason For Decision

14.1 It was explained to Cabinet on 29 October 2013 that in relation to the breakage cost

'If the project continued to experience delays beyond spring 2014 and the County Council decided to continue then it is expected that this figure would have to be revisited as a part of that decision'

and the project, due entirely to the delay caused by the Communities Secretary, is now at that decision point as required under the terms of the revised project.

Background Papers

Cabinet: Waste PFI Contract Award, 07 March 2011.

<http://www.norfolk.gov.uk/view/cabinet070311item17pdf>

Cabinet: Residual Waste Treatment Contract – Revised Project Plan, 29 October 2013.

<http://www.norfolk.gov.uk/view/cabinet291013supagendapdf>

Independent Review of the Contract by Mr Jonathan Acton Davis QC, 13 December 2013.

Report: <http://www.norfolk.gov.uk/view/NCC129771>

Appendix: <http://www.norfolk.gov.uk/view/NCC129772>

Independent Review of Alternatives by PWC, December 2013.

<http://www.norfolk.gov.uk/view/NCC130363>

Independent Reviews of Contract Termination Provisions and Costs by Mr Jonathan Acton Davis QC, 15 September 2013 and by PWC 22 October 2013.

<http://www.norfolk.gov.uk/council281013suppagenda2pdf>

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