

**TENDER FOR ELECTRICITY GENERATION FROM LANDFILL
GAS AND POTENTIALLY NATURAL GAS, INCLUDING
LANDFILL GAS MANAGEMENT**

**CLEAN STREETS, RECYCLING AND ENVIRONMENT
(COUNCILLOR MICHAEL MICHAEL)**

AGENDA ITEM: 3

Reason for this Report

1. To provide an update on the landfill gas position at Lamby Way and Ferry Road Landfill sites.
2. To seek approval to tender for electricity generation from landfill and potentially natural gas, including landfill gas management.

Background

3. There is a current landfill gas lease at Lamby way which has been in place since December 1997 (and which was subsequently extended with effect from December 2014).
4. Under the current contractual arrangement, Cardiff Council receives 15% of the gross income from the generation and sale of electricity.
5. At the end of the current contract, apart from the tenant's installations, much of the site apparatus and equipment together with the conducting media will remain in the Council's ownership for use by the incoming contractor / tenant. The existing tenant is entitled to remove the Tenant's Installation (for example generators, amongst other things).
6. The landfill site at Lamby Way is closed and all cells have been capped since 2018.
7. Lamby Way Landfill Site has produced 359,809 MWhs of renewable energy during the period from 2004 to 2018. The amount of energy produced has declined by 3.5% per year and relates to a reduction in landfill gas.
8. Lamby Way Landfill Site has outperformed most other UK landfill sites by an average of 16.7% over the past seven years, according to efficiency

data obtained from the industry regulator (ofgem) based on 446 landfill sites across the United Kingdom.

9. The Ferry Road Landfill Site has been closed since 1994.
10. The Ferry Road Landfill Site lease has been place since 31st March 1998.
11. Ferry Road has produced 19,747 MWhs of renewable energy during 2004-2018, and its energy has declined by 6.9% per year and relates to a reduction in landfill gas.
12. From the income generated in the last 10 years and the future projection of the landfill gas curve; the anticipated the value of the electricity generated from landfill gas will be in the region of £11.2m from 2020-2032.
13. Should the landfill gas curve continue as forecast until 2040, it is anticipated the total value of the electricity generated from landfill gas will be in the region of £13.3M from 2020-2040.
14. The contractor/tenant as part of the contract covers all costs to manage and maintain the landfill gas wells, pipes and electrical generators.
15. Independent research of the publically reported royalty rates (as a percentage of each site's gross income) by three UK landfill gas operators on four similar comparative sites shows owners of landfill sites are receiving royalty percentage shares of between 30-43% of gross income.
16. There is an opportunity for natural gas to deliver electricity to the power network as landfill gas decreases. This opportunity will be within the proposed tender as it may provide additional income to the Council.
17. The Council is looking to procure long term for both landfill sites. Further detail will be set out in the delegated report referred to in recommendation 2.
18. The Council intends to procure new arrangements via OJEU open procedure via 'Sell to Wales'. The Council will utilise the SQUID pre-qualification document for the purposes of the selection process.
19. The Council are seeking a percentage share of the royalty payments for the electricity that is transferred to the grid, this is to include GDUoS income, Triad income, Traded Power (until 2021), ROC and BSUoS and all associated income and savings.

Issues

20. There is no mechanism to extend the current arrangements and therefore the Council intends to undertake a tender exercise to put in place new arrangements for electricity generation from landfill and

potentially natural gas and landfill and potentially natural gas management at Lamby Way and Ferry Road landfill sites.

21. The Council has a requirement under legislation to manage landfill gas from the landfill sites and the contract will manage this requirement on our behalf. This includes the managing of landfill gas following any economical return by generating electricity.
22. If there is a new contractor / tenant they would take over from our current contractor / tenant. They will need to connect to the national grid and supply the equipment which is within the current contractor's / tenant's installation (e.g. generators and other apparatus within a demised area) may be removed.

Local Member Consultation

23. There are no implications for Ward Members resulting from this report.

Reasons for Recommendations

24. To seek approval to tender for electricity generation from landfill and potentially natural gas and landfill and potentially natural gas management.

Financial Implications

25. Although the Directorate are confident the financial outcome for the Council will be an improved position, with a reduction in the current under recovery of income compared to budget, the actual financial implications will not become apparent until the procurement has been concluded. Given the long term nature of the concession proposed the financial evaluation will need to consider the net financial benefits over the proposed term of the concession and any profiling implications if the bids are not a fixed percentage of income

Legal Implications

26. As set out in the report, the report recommends procuring the contracts as set out in the report. Based on current information, the new arrangements could either be classed as a land (which is not caught by the procurement regulations) or a concession arrangement (which depending on value would be caught by the procurement regulations). In any event, Legal Services understands that the Council intends to publish a voluntary Ojeu notice and to carry out the procurement in line with the Public Contract Regulations (procurement regulations).
27. The legal advice is based on information currently available and matters will need to be kept under review and ongoing legal advice should be sought to ensure the proposals are achieved within legal parameters. Detailed legal advice should also be obtained with regard to i) the drafting of all the relevant procurement documentation (including the draft terms and conditions of contract and duration of such contract/s) and ii)

the procurement process. Any further legal implications will be set out in the delegated report referred to in recommendation 2.

Equality Duty.

28. The Council has to satisfy its public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties) – the Public Sector Equality Duties (PSED). These duties require the Council to have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of ‘protected characteristics’. The ‘Protected characteristics’ are: • Age • Gender reassignment • Sex • Race – including ethnic or national origin, colour or nationality • Disability • Pregnancy and maternity • Marriage and civil partnership • Sexual orientation • Religion or belief – including lack of belief.
29. As noted in the report, consideration has been given to the requirements to carry out Equality Impact Assessments (‘EIA’) and an EIA is attached to this report so that the decision maker may understand the potential impacts of the proposals in terms of equality. This assists the decision maker to ensure that it is making proportionate and rational decisions having due regard to the public sector equality duty.
30. Where a decision is likely to result in a detrimental impact on any group sharing a Protected Characteristic, consideration must be given to possible ways to mitigate the harm. If the harm cannot be avoided, the decision maker must balance the detrimental impact against the strength of the legitimate public need to pursue the recommended approach. The decision maker must be satisfied that having regard to all the relevant circumstances and the PSED, the proposals can be justified, and that all reasonable efforts have been made to mitigate the harm.
31. It is noted that Equality Impact Assessments (which include consideration of views and information obtained through consultation) is attached as appendix to this report. The decision maker must consider and have due regard to the Equality Impact Assessment prior to making the decisions recommended in the report.

Well Being of Future Generations (Wales) Act 2015

32. The Well-Being of Future Generations (Wales) Act 2015 (‘the Act’) places a ‘well-being duty’ on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
33. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff’s Corporate Plan 2019-22. When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how

the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

34. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
- Look to the long term
 - Focus on prevention by understanding the root causes of problems
 - Deliver an integrated approach to achieving the 7 national well-being goals
 - Work in collaboration with others to find shared sustainable solutions
 - Involve people from all sections of the community in the decisions which affect them
35. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

General

36. The decision maker should be satisfied that the procurement is in accordance within the financial and budgetary policy and represents value for money for the council.
37. The decision maker should also have regard to, when making its decision, to the Council's wider obligations under the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

HR Implications

38. There are no current employee implications to be considered in this report.

RECOMMENDATIONS

Cabinet is recommended to;

1. Agree to the proposed procurement process to commission new arrangements for the provision of electricity from landfill and potentially natural gas and landfill and potentially natural gas management at Lamby Way and Ferry Road landfill sites.
2. delegate authority to the Corporate Director of Communities and People, subject to consultation with the Cabinet Member Corporate Services &

Performance and the Cabinet Member clean streets, recycling and environment, s.151 Officer and Director Governance and Legal Services, to deal with all aspects of the procurement process (including approving the evaluation criteria to be used, commencing the procurement and authorising the award of the proposed contract) and all ancillary matters pertaining to the procurement.

SENIOR RESPONSIBLE OFFICER	SARAH MCGILL Corporate Director People & Communities
	4 October 2019

The following appendix is attached:

Appendix 1 – EIA for electricity generation from landfill gas and potentially natural gas, including landfill gas management