

Divisions Affected – N/A

**DELEGATED DECISIONS BY DEPUTY LEADER with
RESPONSIBILITY FOR CLIMATE CHANGE, ENVIRONMENT &
FUTURE GENERATIONS**

18 JULY 2024

**Delegated decision by Chief Executive to approve consent to sub-
contract and variations to a contract with Severn Trent Green
Power**

Report by Director of Environment and Highways

RECOMMENDATION

The Cabinet Member is RECOMMENDED to note the report.

Executive Summary

1. An urgent decision has been taken to consent to the change of arrangements relating to the provision of recycling and waste services at the Ardley In-Vessel Composting site by the Council's contractor, Severn Trent Green Power. The Ardley In-Vessel Composting site has been sold to Biffa who now operate the site. There are no service reductions to the Council, and the Council's contractor remains Severn Trent Green Power. This decision was taken urgently because to delay would have been detrimental to the Council's commercial and financial interests. This contractual change met the key decision threshold, but the details remain exempt under Paragraph 3, Schedule 12A Local Government Act 1972.

Exempt Information

2. The report contains information in Annex 1 that is exempt and confidential as it includes matters related to the sale of a waste facility by OCC's contractor to another company. This is commercially sensitive and OCC signed a non-disclosure agreement with the contractor to enable negotiations on the contract implications to take place. This agreement remains in place.
3. The public should therefore be excluded during consideration of Annex 1 because its discussion in public would be likely to lead to the disclosure to members of the public present of information in the following category

prescribed by Part I of Schedule 12A to the Local Government Act 1972 (as amended): 3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).]; and since it is considered that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in that such disclosure would prejudice the commercial position of the parties involved and would prejudice the position of the authority to the detriment of the Council's ability to discharge its fiduciary and other duties as a public authority.

Background

4. Severn Trent Green Power is contracted by OCC to provide composting and treatment of household garden and food waste. They have several sites in the county that are used for OCC's waste, including Ardley in-vessel composting facility which takes green waste collected by Cherwell District Council and from Alkerton and Ardley Household Waste Recycling Centres.
5. Severn Trent Green Power advised OCC that they wished to sell Ardley IVC to Biffa, a national waste management company. The service to OCC for garden waste treatment at the Ardley in-vessel composting facility would continue with no service reductions. This required OCC's consent under the contract with Severn Trent Green Power, and approval was given in an urgent key decision by the Chief Executive on 23 May 2024.
6. Severn Trent Green Power completed the sale of the Ardley in-vessel composting facility on 12 June 2024, and Biffa took responsibility for the site and its operation on 13 June 2024.
7. EXEMPT Annex 1 contains more information about the commercial, legal and financial aspects of the sale for OCC.

Corporate Policies and Priorities

8. Food and garden waste composting contributes towards corporate priority 9, work with local businesses and partners for environmental, economic and social benefit. Composting reduces carbon emissions and produces fertiliser and soil conditioner that is used on farmland across Oxfordshire.

Reasons for Special Urgency

9. The Constitution specifies procedures and timescales that have to be followed where a local authority executive, committee or individual is taking a Key Decision. A Key Decision is defined in the Council's Constitution (Part 1.3, Section 3 (b)) "as being 25% of the annual revenue budget for the relevant service block (i.e. that part of the Council's total revenue budget allocated to the Cabinet Member for the service area concerned) or £500,000, whichever is the

lower figure, and £1m in the case of capital expenditure; or 25% of the people living or working in the area affected; or 25% of the capacity, frequency or hours of operation of a service or facility.”

10. Local Authorities are legally required to publicise Key Decisions in their forward plans a minimum of 28 clear days prior to the decision being taken.
11. As is common practice, the Constitution makes provision for decisions to be taken, as a matter of urgency, where it is impracticable to give the requisite notice. The general exception rule allows Key Decisions to be taken within the 28 day period, provided that the Chair of the relevant Scrutiny Committee has been informed by notice of the decision to be taken, the Council has made publicly available a copy of that notice and five clear days have elapsed since the publication of that notice.
12. In exceptional cases where a Key Decision is required to be taken even sooner and it is impracticable to wait for the five clear days required under general exception provisions, then the special urgency rules can be applied. In such instances, the decision may only be made if the decision-maker has obtained the agreement of the Chair of the relevant Scrutiny Committee, that the decision is urgent and cannot be reasonably deferred. If there is no Chair of the Scrutiny Committee, or if the Chair is unable to act, then the agreement of the Chair of the Council, or in her/his absence the Vice-Chair will suffice.
13. Furthermore, the Constitution states (Part 6.2, Section 20) that the provision for Call-In “shall not apply where the decision being taken by the Cabinet, Officer or other decision maker is urgent. A decision will be urgent if any delay likely to be caused by the call in process would seriously prejudice the Council’s or the public’s interests. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision maker, the decision is an urgent one, and therefore not subject to call in. The Chair of the Council must agree that in all the circumstances the decision should be treated as a matter of urgency. In the absence of the Chair, the Vice-Chair’s agreement shall be required. In the absence of both, the Proper Officer’s agreement shall be required. Decisions taken as a matter of urgency must be reported to the next meeting of the Council, together with the reasons for urgency.”
14. In relation to the Key Decision by the Chief Executive on 23 May 2024, the Constitution states that the use of the special urgency provision requires the agreement of the Chair of the relevant Overview and Scrutiny Committee. In this case that would be the Place Overview & Scrutiny Committee. However, there was no Chair in place as this issue arose after the Annual Council meeting and before the committee met again to elect a Chair. Therefore, the agreement of the Chair of the Council was sought and given (see paragraph 13).
15. Part 8.1 Section 17.3 of the Constitution requires that “the Leader of the Council will submit quarterly reports to the Council on any executive decisions taken in the circumstances set out in Rule 16 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary

of the matters in respect of which those decisions were taken". This urgent decision was reported to Council at its meeting on 9 July 2024.

16. Furthermore, Part 7.1, para 2(c) says (emphasis added):

"(c) Urgency. The Head of Paid Service is authorised to take any urgent action necessary to protect the Council's interests and assets where time is of the essence, and it is impracticable to secure authority to act where such authority would otherwise be required. The Head of Paid Service, in so acting, will be guided by budget and the policy framework, will consult the other Statutory Officers before acting **and will report, in writing, as soon as practicable to the body which would otherwise have been required to give the necessary authority to act.** Key decision procedures and call-in procedures (Parts 8.1 and 6.2 of the Constitution) will apply to any key decisions taken under this authorisation."

17. A Delegated Decision meeting of the Deputy Leader with responsibility for Climate Change, Environment & Future Generations is the 'body' that would have been required to give the authority to act if the matter had not been urgent. This report is to fulfil this Constitutional requirement to report to the Deputy Leader.

Financial Implications

18. There are no direct financial implications relating to the novation of this contract.

Comments checked by:

Rob Finlayson, Strategic Finance Business Partner (Environment & Highways; Economy & Place), rob.finlayson@oxfordshire.gov.uk

Legal Implications

19. Legal, procurement and governance advice was sought and actioned throughout the process to protect OCC's interests through the contract variation and sub-contract of the service and ensure compliance with all governance requirements. Further legal comments and implications are set out in detail within the body of this report.

Comments checked by:

Paul Grant, Head of Legal and Deputy Monitoring Officer
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Risk Management

20. Continued service for Cherwell District Council and Alkerton and Ardley Household Waste Recycling Centres at a convenient location has been secured for the remainder of the five year contract term. Any risks to the service will be managed by Severn Trent Green Power as OCC's contractor.

Paul Fermer
Director for Environment and Highways

Annex: Annex 1 (EXEMPT)

Background papers: Nil

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